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GUIDELINES TO INTERNATIONAL CONTRACTS FOR THE ACQUISITION, ASSEMBLY AND MANUFACTURE OF AGRICULTURAL MACHINERY AND SPARE PARTS THEREFOR *

Prepared by

Ruth Fitz Gerald
UNIDO Consultant

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These Guidelines have been prepared pursuant to the recommendation of the Second Cosultation on the Agricultural Machinery Industry (Number 17) that UNIDO prepare Guidelines to contracts for the import, assembly and manufacture of agricultural machinery and training taking due account of the documentation considered by that Consultation and the views expressed on it, other relevant national and international documents, views expressed to the UNIDO secretariat by participants of the Consultation and other interested parties and the experience gained in work on contractual arrangements within the framework of the UNIDO System of Consultations.

The purpose of these Guidelines is to outline the clauses in the contracts leading to the manufacture of agricultural machinery which are of particular concern to the purchaser of agricultural goods or the transferee of manufacturing technology from a developing country. The aim of these Guidelines is to assist purchasers of agricultural machinery and industrial works for the manufacture of agricultural equipment from developing countries in their initial negotiations with suppliers by directing such purchasers' attention to some of the items to be provided for in the relevant contracts. This document is intended to supply background information only, furnishing signposts to the more controversial provisions of the contracts under consideration and not detailed descriptions. More particularily, these Guidelines deal with only some of the clauses usually contained in the contracts in question and do not deal with matters more frequently considered by a purchaser's legal advisor rather than by the purchaser him/herself. For a more comprehensive treatment of these contracts, prospective purchasers should look to the documents referred to in the text of these Guidelines.

PART I

THE CONTRACTS UNDER REVIEW

1. Typically, a purchaser's first introduction to a product which he/she may later decide to manufacture is his/her acquisition of it for his/her own use or for re-sale. A purchaser of a factory for the production of agricultural machinery will frequently have had a contract for the acquisition of the same or similar equipment as that which he/she wishes to manufacture. If that first contract was successful - if the equipment was widely sold in the purchaser's country - the purchaser may have gone on to acquire a stock of spare parts for the machinery to enable him/her to repair it. The commencement of the trade in spare parts was, almost certainly, denoted by a contract for their supply to the purchaser. Through his/her business in the sale of machinery and spare parts the purchaser will have become aware of the high costs involved in the importation of agricultural machinery and may decide to build a factory for the assembly or manufacture of that equipment in his/her own country.

2. The elements involved in the construction of industrial works include the engagement of an architect/engineer to design the factory, the erection of buildings, the acquistion of production equipment and its installation and, perhaps, the employment of a consultant to put the works into efficient operation. In addition, a purchaser from a developing country, indeed, any novice to the manufacture of agricultural equipment, may need to acquire the know-how of the technology involved. Should the purchaser desire to produce particular machinery he/she will have to enter a licensing agreement with the original manufacturer of that equipment to permit him/her to use certain patents and trademarks.

3. The various steps described, culminating in the purchaser's assembly or manufacture of agricultural machinery, are each characterized by a contract. These Guidelines consider a number of these contracts marking the stages leading to the assembly or manufacture of agricultural machinery which are likely to have an international basis. The contractual relations considered are between:

(i) a purchaser and a supplier of agricultural machinery;
(ii) a purchaser and a supplier of spare parts for that machinery;
(iii) a purchaser and an architect/engineer for the design of a factory and the supervision of its construction;
(iv) a purchaser and a supplier of production equipment;
(v) a purchaser and an operations manager for the initial management of the factory;
(vi) a purchaser and a transferor of the manufacturing know-how and of industrial property rights (patents and trademarks).

As the contracts for the acquisition of land upon which to build the works, for the erection of buildings to house the production equipment and for the servicing of the works (water, roads etc.) are national in character, these are not considered in these Guidelines. Neither is the question of the training of personnel to operate a factory dealt with in these Guidelines. For a description of the terms and conditions which can be included in a contract between a purchaser and an instructor in industrial and technical methods the reader should consult "Legal Aspects of Industrial Training", UNIDO, 1981.

CONTRACTUAL FORMS

4. The contract form used to obtain a supply of machinery and of spare parts is quite standard - it is the content of the clauses which varies from contract to contract.

5. This is not the case in the construction of a factory where a great variety of skills and materials are required. Broadly speaking, there are three contractual forms now commonly used to achieve the establishment of industrial works: the turnkey contract, the comprehensive contract and a series of separate contracts with different suppliers.

(i) The expression "**turnkey**" describes the form of contract used when a purchaser employs one supplier to deliver fully constructed, operational works. That one supplier is responsible for all phases of the construction, including its timely completion and efficient operation. A **semi-turnkey** contract is one in which the supplier, although not undertaking the entire construction, is responsible for putting the works into operation as is the turnkey supplier.

(ii) A "**comprehensive contract**" is one in which the supplier undertakes both the building and civil engineering work and the supply and erection of the industrial plant and assumes responsibility for the works and services as a whole. Comprehensive contracts are sometimes concluded with a **joint venture**, that is to say, with a group of suppliers acting as one single contracting body to the purchaser.

(iii) Under the "**separate contracts**" formula, the purchaser employs a number of suppliers to provide the various services and materials required for the construction of the factory. Each supplier is only liable to the purchaser for the specific equipment, materials and services which he/she is engaged to provide.

6. A consideration of the different tasks involved in the construction of a factory for the assembly or manufacture of agricultural machinery will reveal that a major feature is the co-ordination of the various elements. In this context time is money; delay in one aspect of the work will have a domino effect and may require the payment by the purchaser of penalties/liquidated damages to a supplier who has been delayed in his/her performance of his/her contractual obligations by some other supplier's failure to adhere to the time schedule. Furthermore, the different elements brought together and merged in the construction of works makes it difficult to establish which of a number of suppliers involved is responsible for a defect becoming apparent later. In construction contracts, therefore, the party in overall control bears two substantial risks - the hazards of delay and the danger that defects will not be ascribable to individual suppliers.

7. If a purchaser employs one supplier to deliver a completed factory - by way of turnkey or comprehensive contract - the supplier assumes responsibility for the co-ordination of the various elements in the construction and he/she is liable for any delay. Under a turnkey contract, the supplier is liable for any defect in the works whether or not that defect arises from the supplier's own work or that assigned by him/her to a sub-contractor.

A supplier under a semi-turnkey or comprehensive contract is liable to the purchaser for those defects which occur in that part of the works undertaken by him/her. But if the purchaser acquires the skills, materials and equipment necessary for the construction of the factory from different sources under separate contracts, he/she is responsible for the co-ordination of the various elements of the construction although, as will be seen, he/she can discount this risk in the engagement of a professional manager to supervise and co-ordinate operations. The greater the number of suppliers involved, the more difficult it becomes to ascribe a particular facet of the work, and hence a particular defect, to the services or materials provided by an individual supplier. The purchaser must bear the financial consequences of defects in the works if it proves impossible to establish the specific responsibility of a particular supplier out of a number engaged in the construction of the works.

8. As is apparent, the risks undertaken by a turnkey supplier and, to a lesser extent, by a comprehensive contractor, are substantial. The carriage of these risks inevitably inflates the purchase price payable to such suppliers. The price is also greater where turnkey or comprehensive contracts are used because the price includes what would, if specified, be called commissions on the procurement by the supplier of services and materials from third parties.

9. An analysis of the relative merits of the possible contractual forms which can be used is not within the scope of these Guidelines (rather, see "Guide on Drawing Up Contracts for Large Industrial Works" ECE/Trade/117 and UNCITRAL document A/CN.9/WG.V/WP.15/Add.8, "Choice of Contracting Approach"). Suffice it to say that there are many circumstances (see paragraph 10 below) which render the employment of different suppliers under separate contracts the optimum means for particular purchasers to construct a factory. These Guidelines presuppose that the purchaser has chosen to use the latter contract form.

SEPARATE CONTRACTS APPROACH

10. The principal benefit in using the contractual form of a series of contracts is the lesser cost commensurate with the purchaser undertaking the risks mentioned. There are other benefits; the purchaser is not tied to buying only the materials and equipment which one supplier can provide, he/she can purchase different items from a variety of suppliers; the purchaser can maximize his/her employment of local contractors thus effecting a saving in foreign exchange and a development of local skills; the purchser can learn from his/her greater involvement in the construction of the works, inter alia, he/she can acquire information about the original sources of materials and equipment enabling him/her to deal directly with the source suppliers in the future.

11. The tasks involved in the construction of a factory are outlined in paragraph 2 above. These elements in the construction of works can each be supplied by different parties or the suppliers can be engaged to carry out several services each, e.g. the supplier of plant may also be engaged to carry out its installation, indeed, he/she may also grant the purchaser a patent licence.

12. The risks inherent in the co-ordination of the various elements of work in the construction of a factory, borne by the purchaser under the separate contracts form, can be discounted to some extent by the employment of a professional construction manager. It is now quite common for industrial architects/engineers to provide services which cover both the initial, design stages of the project and the co-ordination and supervision of construction. A construction manager, be he/she the designer of the works or not, can be engaged not merely to advise the purchaser during construction but also to plan and schedule, to draft tender documents, to negotiate and conclude contracts with suppliers, to test materials and equipment and to supervise and co-ordinate the construction. Unless the purchaser has engineering knowledge and construction experience it will be necessary for him/her to employ a construction manager.

13. Although his/her liability to the purchaser can be considerable, depending on the functions alotted to him/her under the contract between the purchaser and the construction manager, the latter does not take on all the responsibilities of a turnkey contractor as regards suppliers' delays and defects in the works. The distinction between the two is demonstrated by the fact that in contracting with suppliers, the construction manager does so on behalf of the purchaser while the turnkey contractor does so on his/her own behalf thus remaining liable to the purchaser for his/her sub-contractor's work.

GENERAL CONSIDERATIONS IN THE DRAWING OF CONTRACTS

14. A satisfactory contract is one which sets out clearly the objectives being pursued by the purchaser and the supplier, accurately reflects the parties' agreement, clearly defines their respective rights and obligations and facilitates the settlement of any disputes which may arise.

15. The more precise and clear the words of a contract are, the less likely are later disagreements. In the process of negotiating towards a precisely worded contract the parties' ideas are clarified and their commitments brought home to them. It is necessary for the parties to a contract to draw it up with utmost care so as to make clear their respective rights and obligations.

16. However, this drive towards precision may of itself give rise to difficulties. In drafting a contract the parties - particularily when they are attempting to be specific - tend to deal only with those areas of primary or immediate concern thus failing to provide for matters which may become important in the implementation of the contract. It is a general practice in the interpretation of contracts that where detailed clauses and expressions are employed, the absence of a specific provision is assumed to be a deliberate exclusion. To ensure that there are no lacunae in the contract, provisions of more general application should be coupled with more specific ones (see paragraph 34 below for an example). In order to give effect to that general provision the more detailed clauses or expressions should be stated to be indicative rather than exhaustive.

17. Contracts between compatriots are negotiated and concluded against a background of national law known to both parties. Many matters are not specifically dealt with in such contracts, the parties being content to allow the importation to the contract of their country's law.

This is not the position in international contracts. Very often, the applicable law or Courts with juristiction over the parties will not be completely certain. Furthermore, one party may resist the application of the entire legal system of the other party's country to the contract. Indeed, a national code may not provide for the regulation of international contractual relations. Thus it is that international contracts provide in detail for many matters often not mentioned in national contracts. The rights and obligations of the parties are not assumed to be those deemed by a particular national law, rather they are specifically and deliberately set out. This usually applies to all the provisions of the contract, not only those made necessary by the very fact of the contract being an international one, e.g. the specification of the applicable law (see paragraph 68 below). In this context it should be noted that a number of international conventions exist which can be imported to the contract by specific reference - the contract need only mention their application for these to be read into it (as an example see INCOTERMS, International Commercial Terms).

18. Where an enterprise involves the conclusion of a number of contracts with different suppliers the purchaser must ensure that the contracts are compatible. This is of particular importance in the clauses dealing with the consequences of the supplier's delay (see paragraph 23 below). Where the purchaser employs the separate contracts approach he/she must ensure that in the event of non-performance or delay on the part of any of the suppliers that the latter will compensate him/her sufficiently to enable the purchaser to discharge any financial obligations he/she may have incurred towards the other suppliers arising out of the first supplier's delay or failure in performance. Each of the contracts should make specific reference to it being one of a number of contracts for the creation of an enterprise and state its dependance on the other contracts. (This item can be included in the recitals mentioned at paragraph 54 below).

19. Lawyers the world over use precedents, forms or models in drawing contracts. While, of course, they change many of the provisions of the clauses used in such precedents, these act both as a source of ideas as to the eventual content of the contract in question and as a checklist to ensure that all aspects are provided for in the contract. A purchaser will find it useful to puruse a number of these precedents, forms and models as they will stimulate his/her ideas as to how to deal with the various aspects of his/her contractual relations with the supplier. But, caveat emptor. These precedents, forms and models, often published by suppliers, must not mesmerize the purchaser leading him/her to believe that the provisions in such precedents are immutable. Rather, the purchaser should have it foremost in mind that a contract's principal purpose is to reflect the agreement of the parties - the agreement comes first and its negotiation should not be dictated to by these forms and precedents.

20. In some countries there exists legislation governing certain aspects of contractual relations. This is particularily the case in respect of contracts for the transfer of technology. For instance, in some countries anti-monopoly (anti-trust) legislation limits the length of time for which a purchaser can be bound to buy goods from a supplier. Thus a purchaser negotiating with a supplier should agree the terms of the proposed contract in principle only and should make the agreement subject to confirmation that the suggested terms do not infringe any national or international law applicable to the contract.

PART II

This Part seeks to sketch the more controversial clauses particular to the contracts under review. There are certain clauses which are virtually standard in international contracts and which are not specifically referable to the subject matter of the agreement. These last are considered in outline in Part III of these Guidelines.

A. CONTRACT FOR THE SUPPLY OF AGRICULTURAL MACHINERY

21. Quality and Suitablility

(a) A purchaser from a developing country may not have available locally the information necessary to enable him/her to judge the quality of the agricultural machinery which he/she proposes to buy. In addition, a novice in the acquisition of that machinery, who has little or no national technical expertise to draw upon, cannot know what particular machinery will best suit the soil and other conditions prevailing in his/her country.

(b) There are two approaches which the purchaser can adopt in seeking to ensure the suitability and quality of the equipment: the purchaser can require the testing of the machinery before purchasing it or he/she can rely on the supplier's representations. These courses of action are not mutually exclusive, a blend of both can be included in the contract. However, as will be seen, the testing of the equipment may water down the effect of the supplier's representations. There are advantages and disadvantages to whichever approach is principally emphasized in the contract.

(c) Under a number of legal systems a purchaser's reliance on representations made by a supplier will render the supplier liable should any of these prove false. The enforcement of that liability can, of course, contain difficulties in the question of proof and will, most likely, be subject to the delays and other drawbacks occasioned by Court proceedings. On the other hand, where machinery is tested for suitability or quality, either by the purchaser or an independent expert, the purchaser risks it being deemed that he/she did not rely on the supplier's statements. Furthermore, if the purchaser is not sufficiently skilled or experienced to test the machinery, he/she may need to have these trials carried out by an independent expert. The latter testing will undoubtedly increase the purchase price. The purchaser must weigh up the relative merits of the two approaches; the benefit of an early disclosure in tests of defects and of the unsuitability of the equipment against the consequent increase in cost and the possibility of being left with no remedy should the trials fail to uncover defects or the unfitness of the machinery to local conditions. The purchaser can require the inclusion in the contract of an amalgam of these approaches, e.g. the contract can be made conditional upon the supplier testing the equipment in the purchaser's country and achieving certain results.

(d) If the purchaser is relying on the supplier's representations to aid him/her in his/her choice of machinery, then this must be reflected in the contract by the inclusion of a reference to the purchaser's express dependance on the supplier's statements. Whether or not the purchaser decides to employ the testing approach to check on the suitability or quality of the machinery, the representations of the supplier should be assimilated into the contract as warranties or conditions. (In this context it must be noted that under some legal systems the breach of a **condition** of a contract permits the injured party to rescind the contract while most legal systems require the offending party to pay compensation for a breach of **warranty**.) The Final Act of the United Nations Conference on Contracts for the International Sale of Goods deems certain representations implicit in every contract to which it applies.

The provisions of this Final Act can be specifically imported to the contract as the "general provision" referred to in paragraph 16 above by the agreement of the parties (see also paragraph 17) and more specific representations particularized, e.g. that the machinery will suit the purchaser's local conditions. (See also paragraph 26 below).

(e) The question of the suitability of machinery to local conditions is one of particular concern to a purchaser from a developing country. In order to make certain that this matter is adequately dealt with in the contract the issue of suitability and the issue of quality should be the subject of separate clauses.

22. After Sales Service

(a) Purchasers in developed countries often have as an incentive to purchase substitute equipment the tax advantages of such a replacement. Furthermore, the sophisticated consumer market in the developed world allows a ready acceptance of the concept of obsolescence. This is far from the case in developing countries where tax advantages are, for the most part, a thing of the future and machinery must be made to work for and beyond its natural life. An after-sales service is therefore of greater importance to a purchaser from a developing country.

(b) The method principally used in contracts to ensure a minimum after sales service and the freedom of the goods from defects is that of a guarantee. In this context a **guarantee** is a promise to make good - by replacement or repair - any defects in goods which are not due to factors beyond the supplier's control, e.g. misuse by the purchaser. Guarantees are limited in time. The purchaser should seek to obtain as long a guarantee period as possible - this period can be measured in time or in hours-use of the machinery. Furthermore, the contract can be made to provide for a new guarantee period to run on equipment repaired or replaced under the guarantee. Time limits must be set within which any faults will be corrected to ensure that the machinery does not lie idle for long. Many contracts provide that where the supplier fails to perform his/her obligations under the guarantee that the purchaser will be entitled to repair the goods at the risk and cost of the supplier. Given the circumstances of a purchaser from a developing country, **inter alia**, the fact that he/she will, most likely, have no back-up equipment, such a purchaser should consider providing in the contract a sanction against non-performance of the guarantee, e.g. the payment of liquidated damages by the supplier (see paragraph 23 below).

(c) Unless the contract provides otherwise, once the guarantee period has expired the supplier's only remaining liability is in respect breach of contract and, under certain legal systems, of what are called **"latent defects"**. These are defects so fundamental that, although they fall outside the terms of the guarantee, national laws require the supplier to rectify them. For the reasons explained at paragraph 17 above the purchaser should ensure that the contract specifically provides for the rectification of latent defects. In addition, the purchaser may wish to have the contract provide for the repair and maintenance of the machinery by the supplier on the expiry of the guarantee period - such services will, of course, have to be paid for by the purchaser.

23. Delivery

(a) Experience and adequate financing enable purchasers from developed countries to anticipate their purchase requirements. These purchasers' ease in planning permits them to build into their acquisition's schedule a tolerance for delay. This is not the case for purchasers from developing countries. Accordingly, the supplier to the latter purchasers must be in a position to assure the delivery of agricultural machinery within certain time limits.

(b) A failure in the due delivery may have a series of grave consequences for a purchaser from a developing country. Monetary compensation - of whatever magnitude - may not be sufficient to make good the damage which can result from such tardiness. But, the prospect of having to pay compensation can, of itself, be an inducement to the supplier to adhere to delivery schedules.

(c) Two standards of compensation are generally used in contracts, damages and liquidated damages (or penalties). The word **"damages"** refers to those monies required to compensate a person for an injury done to him/her. Simple damages are calculated after the breach of contract (be it a breach of the delivery schedule or a breach of warranty), bear a direct relationship to the loss suffered by the injured party and are usually limited to compensating the loss which was forseeable by the supplier. **Liquidated damages**, on the other hand, represent compensation estimated before the damage arises, that is to say, in the contract - usually calculable at a daily, weekly or monthly rate - and payable on the occurrance of some breach of contract without, necessarily, an investigation of the injured party's loss and, often, without proof of the offending party's culpability. (A **penalty**, which is not recoverable under some legal systems and, therefore, should not be employed as a sanction unless all the possible legal systems applicable to the contract permit its enforcement, is in the nature of a fine and does not represent a genuine pre-estimation of an injured party's loss as do liquidated damages.)

(d) The advantage of liquidated damages to the injured party is that the party in default becomes immediately liable to pay them - there is no delay while loss is established. The very immediacy of liquidated damages tends to stimulate compliance with the contract. The disadvantage of liquidated damages lies in the fact that the amount of the compensation is fixed at the outset and cannot be revised when the damage actually occurs. This is a clear drawback as it is not usually possible to determine in advance the loss which may result from a party's breach of contract. Furthermore, as liquidated damages are usually payable whether or not the loss they are meant to compensate actually occurs, they are invevitably fixed at a lower amount then would be payable as damages if a forseeable loss were to be sustained. There are circumstances in which liquidated damages will only compensate a fraction of the loss suffered. Conversely, the advantage of damages is that they compensate the loss actually sustained to the extent to which it was forseeable by the defaulting party. The disadvantage of damages is the considerable delay there may be in their award - a delay caused by the Court's necessary intervention to investigate liability and evaluate the damages payable. The fact of legnthy Court proceedings may make the damages irrelevant by the time they are recovered, e.g. where a purchaser has been unable to manufacture by reason of a supplier's non-delivery of some small but essential part. (See also UNCITRAL document A/CN.9/WG.V/WP 11/Add. 4 on the topic "Damages").

(e) The purchaser must, in the light of his/her own circumstances, determine which form of compensation is most suitable to him/her should the supplier be in breach of contract. In the case of delivery, the method now most commonly employed to seek to ensure that there will be no delays is for contracts to provide for the payment of liquidated damages in the event of the supplier's delay. If due delivery is essential to the purchaser, then the approach to be favoured is, perhaps, that of liquidated damages rather than damages as this method is more likely to induce the supplier to make delivery on time even if, in the event, liquidated damages do not properly compensate the purchaser.

(f) The amount fixed as liquidated damages, if this approach is used, should be a genuine pre-estimate of the purchaser's likely loss taking all circumstances into account. The higher the liquidated damages, the more likely these are to motivate the supplier to deliver the machinery promptly.

(g) There are, of course, aspects of delivery other than delay which are of particular concern to a purchaser from a developing country. If machinery is delivered in a completely knocked down form then the purchaser will, most likely, require the supplier to supervise the assembly of the equipment. It is useful to require that the supplier use local employees in this assembly work as this will give the latter an opportunity of familiarizing themselves with the machinery. If the country of delivery does not have good port, road and freight facilities, the contract should provide for the adequate packing of the equipment to meet these local conditions. Furthermore, the purchaser must ensure that the contract provides that each item of equipment be accompanied by all the necessary technical documentation and tools.

B. CONTRACT FOR THE SUPPLY OF SPARE PARTS FOR AGRICULTURAL MACHINERY

24. Stock Management

A purchaser from a developing country commencing a trade in spare parts for agricultural machinery has not the quantity or quality of information available to him/her as his/her counterpart in the developed world; the latter can easily obtain nationally supplied training and the relevant machinery sales information. The purchaser from a developing country may be able to acquire the necessary skills and information only from the supplier. The latter is in the best position to know the quantity of machinery present in the purchaser's country which requires the spare parts in question and, further, is aware of those parts most frequently replaced. Accordingly, a contract for the supply of spare parts to a purchaser from a developing country should require the supplier to assist in the initial management of stock. One method which can be employed is to have the contract provide that the initial stock requirements be estimated by the supplier and that, for a period at least, the supplier will accept a return of surplus stock crediting or paying the purchaser the cost of such returned spare parts. (As regards the transfer of information see paragraph 30 below).

25. Technical Information

Where the supplier of spare parts is also the supplier of the agricultural machinery the purchaser should require the supplier to provide him/her with a list of the components of such equipment. As the purchaser's trade in spare parts will necessitate his/her complete understanding of the machinery and its components the contract should also require the supplier to furnish the purchaser with all the documentation, including diagrams and instructions for repair and maintenance, relevant to the equipment.

26. Quality

The remarks made in paragraph 21 above about the quality of agricultural machinery to be supplied are equally applicable to spare parts save to this extent: In practice it is unfeasible to apply the approach of having the parts independently tested as can be done in the case of machinery. The purchaser is usually compelled to rely on the supplier's own quality controls. As has already been said, the supplier's representations should be specified in the contract - from the most obvious, e.g. that the parts are fit for the purposes required of them by the purchaser, to the most specific, e.g. that they will be capable of x hours' use.

27. Delivery

Again as regards delivery much of what has been said about the delivery of agricultural machinery (paragraph 30 above) is relevant to spare parts. However, where in respect of machinery the purchaser has the option of making provision in the contract for the payment of damages or liquidated damages (or penalties, as the case may be) on the breach of the delivery schedule, the very frequency of the transactions in contracts for the supply of spare parts makes liquidated damages (or penalties) a more suitable remedy for delays in delivery.

28. Price

The nature of trade in spare parts is such that a change of supplier usually leads to an upheaval in the purchaser's business (but see paragraph 30 below where a phased change-over of supplier is considered). This is more particularily the case when the purchaser, being from a developing country, has not the means to come to know other suppliers. Thus by entering such a contract, indeed, perhaps in entering the original contract for the supply of agricultural machinery, a purchaser from a developing country is binding him/herself to acquiring spare parts from the supplier for a period of years. To counterbalance this commitment by the purchaser it is usual for contracts for the supply of spare parts to provide that the prices of those parts will remain fixed on an annual basis. Another form of consideration given in exchange for the purchaser's commitment is the accordance to the purchaser of the status of "most favoured customer". The grant of such status in a contract usually means that the supplier is obliged to give the purchaser, by way of ammendment of the contract, any more favourable terms or conditions as may be contained in contracts subsequently entered by the supplier with third parties.

29. Duration of the Contract

(a) As has been mentioned, the more sophisticated consumer market in the developed world - abetted by such considerations as the tax advantages in replacing trade machinery - permits a ready acceptance of claims of obsolescence. The fact that this is not the case in the developing world, added to the lack of information and experience referred to, makes continuity of supply a more important consideration to a purchaser from a developing country than it is to his/her counterpart from a developed country. The former must seek to include in the contract a promise by the supplier to supply the purchaser with the spare parts manufactured by him/her for at least a minimum number of years.

(b) In order to provide for the possibility of the supplier ceasing to trade or being reluctant to bind him/herself to the manufacture of a part solely in order to supply this to the purchaser, the contract should contain some flexibility in the supplier's obligation of continuous supply. One means of achieving this necessary malleability in the contract is to include a provision that the supplier will furnish the purchaser with all the documentation and licences necessary to enable the purchaser or some person at his/her behest to manufacture any parts of which the supplier discontinues production. (In respect of those parts supplied but not manufactured by the supplier, see paragraph 30 below). This undertaing by the supplier can be viewed as part of the consideration for the purchaser's commitment mentioned in paragraph 28 above.

30. Sub-Contractors and Original Sources of the Parts

(a) The components of agricultural machinery are not all manufactured by their supplier. Inevitably, a supplier of parts obtained from a third party charges the purchaser a handling fee over and above the cost price. It is therefore in the interests of the purchaser to deal directly with such third parties. In order to do so the purchaser must know who those source suppliers

are and why they were chosen by the supplier. The purchaser must also have available the specifications of those parts to enable him/her to "shop around".

(b) This information is valuable. Furthermore, it is highly confidential and will only be revealed by the supplier when a certain degree of trust has been built up between the parties. One form of "payment" which the purchaser could make for the transfer of this information is to bind him/herself to purchasing all spare parts (including those not produced by the supplier) for a number of years (this is called a **solus agreement**) on the expiry of which the supplier will be required to furnish the purchaser with the information mentioned and after which period the purchaser need only purchase from the supplier those spare parts manufactured by the latter. There are, of course, other methods by which the purchaser can pay for this information. Different means recommend themselves to different circumstances.

C. CONTRACT FOR THE DESIGN AND SUPERVISION OF THE CONSTRUCTION OF WORKS FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY

31. Scope of Services

(a) As has been explained (see paragraphs 6 and 7 above) the greatest single task in the construction of a factory is the co-ordination of the supply of materials, equipment and services. Where the contractual form of obtaining goods and services from different sources is used by the purchaser, that co-ordination is his/her responsibility. Purchasers who lack experience are well advised to engage a construction manager to supervise and marshal the construction of the works. For the purposes of these Guidelines the rôle of construction manager is deemed to be assumed by an industrial engineer/architect (see paragraph 12 above).

(b) The services which an architect/engineer can provide are wide ranging, they cover the spectrum from counselling services and pre-investment studies, through the design and supervision of the construction of the buildings to house the plant and the installation of the production equipment, to specialist design and development services, including technical assistance. It is not within the competance of these Guidelines to detail the services available from such an engineer/architect. For a description of these prospective purchasers should look to more specialized documents (see, for instance, ECE document "Guide for Drawing Up International Contracts on Consulting Engineering, Including Some Related Aspects of Technical Assistance" Trade/145).

(c) On balance, it is preferable to employ the services of the architect/engineer from at least the design phase. The earlier he/she becomes involved, the more he/she can direct measures which will facilitate the co-ordination of the construction. Thus, the engineer/architect engaged before the contracts with individual suppliers are concluded will be able to provide the purchaser with details of the delivery and performance schedules to be included in those contracts. Indeed, the architect/engineer can be engaged to negotiate and draw the contracts in co-operation with the purchaser's legal advisor.

(d) The services to be performed by the industrial architect/engineer are, of course, a matter for the parties to agree. Certain preparatory work should, however, be done by the purchaser. The latter should obtain information about the construction of works and, on the basis of this, list the tasks which he/she wishes the engineer/architect to carry out. He/she is then in a better position to choose those services which are essential to him/her from amongst those offered by the architect/engineer.

32. Functions

(a) The parties should ensure that the contract sets out the engineer/architect's functions in the various aspects of his/her work clearly. This is of importance because usually an engineer/architect engaged in the construction of works fulfills two capacities, if not three. His/her primary rôle is as agent and advisor to the purchaser in the services he/she is engaged to provide. However, construction contracts usually vest in the engineer/architect quasi-judicial functions requiring impartiality on the engineer/architect's part. These functions can be described as those of a "certifier".

(b) A contract between a purchaser and a supplier of equipment or services for the construction of a factory usually provides that payment will not be made against goods delivered or services rendered until the engineer/architect has certified that the goods or services have been so delivered or rendered in accordance with certain standards of quality. In certifying, the architect/engineer does not act as the purchaser's agent - he/she must act impartially and fairly between the parties and with disinterest. This does not mean that the engineer/architect's function is that of judge between the parties, rather, he/she is required to exercise professional independence in valuing or appraising the work done and materials supplied. Thus the architect/engineer must often act in two capacities in respect of the same matter requiring approval. He/she acting as the purchaser's agent may disapprove of the work or materials but, as a certifier with quasi-judicial functions, will have to decide with impartiality whether or not the work and materials are adequate and ought to be approved.

(c) Occasionally a contract will vest in the engineer/architect a third function, that of arbiter in disputes between the parties. Indeed, while few contracts provide for this latter function to be assumed by the architect/engineer, in practice the parties frequently refer disputes to the engineer/archichitect whose opinion is often accepted by both parties in consequence of their experience of his/her impartiality as certifier (see also paragraph 66 below).

33. Price

(a) The charges made for an architect/engineer's services comprise reimbursement for a variety of expenses - e.g. the salaries of the architect/engineer's employees, the use of equipment, office overheads - and a margin of profit. Charges are usually computed on one of the following basis or by a combination of two or more:

(i) **Time:** This method is based upon the payment to the engineer/ architect of a fee for the time spent by him/her and each category of his/her staff in working for the project - the payment being calculated at hourly, weekly or monthly rates agreed in the contract - plus a reimbursement of the costs directly incurred by the architect/engineer.

(ii) **Payroll cost multiplied by an overhead factor plus direct expenses:** Under this formula the engineer/architect's fee is calculated by multiplying the salaries of the architect/engineer's staff engaged in the project by an overhead factor representing the engineer/architect's profit specified in the contract plus the costs directly incurred by the architect/engineer.

(iii) **Lump Sum:** This manner of payment - by a lump sum agreed in the contract inclusive of the architect/engineer's direct expenses or not, as the case may be - is not favoured by architects/engineers if there is any uncertainty about the time the construction will take.

(iv) **Percentage of the construction cost**: This method of calculating the architect/engineer's fee is usually employed when his/her principle task is that of designing the works and preparing drawings and specifications. The engineer/architect is paid a sum equal to an agreed percentage of the construction cost. The "construction cost" is the total actual or estimated, as may be agreed, cost to the purchaser of the construction of the works. The direct costs of the engineer/architect may be reimburseable or not, depending upon the parties agreement.

(v) **Expenses plus a percentage fee or a fixed fee**: This method is based on the reimbursement to the architect/engineer of the cost of his/her services. The expenses involved usually consist of three factors - the salaries of his/her staff engaged in the work, his/her overheads (office etc.) and out-of-pocket expenses (travel etc.). To the expenses is added a fee calculated either as an agreed percentage of the expenses or in the form of a lump sum.

(vi) **Retainer**: Where the engineer/architect's services are expected to be required only as the occasion demands, it is usual for a purchaser to pay him/her a retainer. The retainer ensures the availability of the engineer/architect. The amount paid by way of retainer varies according to the services of which the purchaser wishes to be assurred. In addition to the retainer, the purchaser must pay the architect/engineer for any services actually rendered on whatever basis is agreed.

(b) The very structure of the methods of calculating the price for the services of an industrial engineer/architect are such that it is difficult to determine the ultimate cost of employing him/her. To enable the purchaser to know as clearly as possible what is involved, the reimburseable expenses, payable in addition, to the "profit" fee, should be detailed in the contract. From these particulars the purchaser may learn means of minimizing the overall price. (See also "Guide for Drawing Up International Contracts on Consulting Engineering, Including Some Related Aspects of Technical Assistance" ECE/Trade/145.)

34. Standards (Quality)

The customary provision in contracts with engineers/architects that the latter will render the services contracted for with all skill, care, deligence and efficiency and in conformity with recognized professional standards should, perhaps, be viewed as a "general" clause (see paragraph 16 above). The purchaser should consider making applicable to the engineer/architect's services in addition the standards of the latter's professional association or those of an international or national body (see paragraph 58 below). (As to a description of the quality of services to be provided by reference to the results to be achieved, see paragraphs 38 and 44 below.)

35. Limitation of Liability

Many contracts between a purchaser and an engineer/architect provide for the limitation of the engineer/architect's financial liability to the purchaser in damages for breach of contract or negligence. Very often the limitation is defined in terms that the maximum compensation which the architect/engineer will become liabile to pay the purchaser is a sum equal to his/her fee or a percentage of it. If the engineer/architect insists on the inclusion of such a limitation, the purchaser should seek to have this set at such an amount as bears some relation to the engineer/architects responsibilities.

D. CONTRACT FOR THE SUPPLY OF PRODUCTION EQUIPMENT FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY

36. Equipment to be Supplied and Services to be Performed

(a) The contract must, of course, particularize the production equipment to be delivered by the supplier and the installation work to be carried out by him/her. The purchaser may find that certain elements of the equipment are available in his/her own country and may desire to purchase these locally rather than to import them. Where equipment is purchased from different sources it is usually better to have one party, preferably the main supplier, install all the production equipment.

(b) Automation in manufacturing processes leads to rapid technological advances and the purchaser should be put in a position to profit from these. Given that the purchaser's country, if it is a developing one, may lack a tradition in industry, the purchaser may require the supplier's assistance in this regard. To this end a provision should be included in the contract requiring the supplier to keep the purchaser informed of any technological changes and enabling the purchaser to alter his/her order for equipment before some date defined by reference to the delivery schedule. Alternatively, the supplier should be required to warrant that the production equipment will incorporate the latest proven technology as of a certain date.

37. Technical Information

(a) In order to be in a position to plan the construction work the purchaser must have available at an early stage all the technical information relating to the plant. The contract must make specific provision for the early delivery of this data.

(b) The purchaser must ensure that the contract requires the supplier to furnish the former with all the instructions, drawings and information necessary to enable the purchaser to maintain and repair the plant. Indeed, the purchaser should consider including in the contract a provision entitling the purchaser (with his/her employees) to attend during the manufacture of the plant at the supplier's factory or wherever the machinery is being produced so as to familiarize him/herself with the machinery. This latter provision could be coupled with one requiring the testing of the plant in the purchaser's presence.

38. Quality

(a) Paragraph 21 outlines the means by which the requirement of quality in goods can be dealt with in a contract. The same principles apply to contracts for the supply of plant. In respect of plant, however, an additional means by which the quality of goods and services to be provided can be describled is by pre-specifing the results these are to achieve in terms of the quantity and quality of the products to be assembled or manufactured with the production equipment.

(b) There may be an additional requirement to that of quality simply. Production equipment is only one element in the construction of a factory and it must conform with the other elements involved. Thus it may be necessary to stipulate in the contract that the production equipment will meet the specifications and production standards required of it by other aspects of the construction. This is more particularly the case if the purchaser has entered a licensing agreement.

(c) If the supplier is to erect and install plant, both that supplied by him/her and by third parties, then the warranties of quality must be made to apply not only to the production equipment delivered by the supplier but also to the erection and installation of all the plant.

(d) Where the purchaser has engaged an architect/engineer to supervise and co-ordinate the construction he/she has the opportunity of double-checking the plant and its installation in so far as the engineer/architect can be given the task of testing and inspecting these. Payment of the purchase price can be made conditional upon the certificate of the architect/engineer indicating the supplier's compliance with the contract. (See also UNCITRAL document A/CN.9/WG.V/WP.13/Add.1 "Scope and Quality of Works".)

39. Delay in Performance

The remarks made in paragraph 23 and paragraph 18 apply to the supply of production equipment. (See also UNICTRAL document A/CN.9/WG.V/WP.11/Add 3. "Failure to Perform" and A/CN.9/WG.V/WP.7/Add.3 "Maintenance and Spare Parts.)

40. After Sales Service

The comments made at paragraph 22 apply.

E. CONTRACT FOR THE INITIAL MANAGEMENT OF WORKS FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY

41. Scope of services

(a) The tasks involved in organizing and putting into operation industrial works are numerous and varied; they include the establishment of management systems, the organization of procurement and supply, the putting into operation of stock management procedures, the organization of production itself, the planning of personnel requirements and the latter's training, the drawing of instructions and operation procedures and the planning and carrying out of experiments to achieve the optimal use of the production equipment. The more skillfully the initial management is carried out, the more efficient will be the later operation of the factory.

(b) Purchasers who lack experience often engage an operations manager, be he/she the supplier of the plant, the industrial engineer/architect, the licensor or some other person, to assist in the initial operation of the works. The operation's manager can be engaged to advise and instruct the purchaser and his/her employees in the running of the works only, leaving the purchaser with direct responsibility for their operation. Alternatively, the operations manager's function can be to take complete responsibility for the management of the factory for a specified period followed by a phased transfer of responsibility to the purchaser. Whichever division of responsibilities is chosen - whether the operations manager is to be directly or indirectly answerable for the operation of the factory - this must be specified in the contract.

(c) It is beyond the scope of these Guidelines to describe the services offered by operations managers (the reader should consult ECE document "Guide on Drawing Up International Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works" Trade/GE. 1/R.32 for a description of these). Suffice it to say that these range from actual technical management to technical assistance and training. The purchaser, in the light of the skill and experience available to him/her, can choose to employ an operations manager to provide technical management with direct responsibility in those areas in which the purchaser has no expertise, to render technical assistance (leaving the purchaser with direct responsibility) in those sectors of works management in which the purchaser has some experience and/or to provide the training of the purchaser's employees in certain or all technical and managerial matters.

42. Transfer of Responsibility

Where the operations manager is directly responsible for the operation of the factory or any aspect of its management, that is to say, where the operations manager is supplying technical management, it is essential that the contract specify the method and time scale by which the operation manager's responsibilities are to be transferred to the purchaser. In this regard, particular attention must be paid to the phasing of the training to be provided so as to ensure that the purchaser and his/her employees are adequately instructed when they come to take over the operation of the factory.

43. Information

(a) The purpose in engaging an operations manager is not only to have him/her exercise his/her skill and experience in the initial management of the works but also to obtain from him/her the information necessary to enable the purchaser to manage the factory and to operate it efficiently. That information should, of course, pass to the purchaser and his/her employees in the course of the initial management to ensure that the purchaser will be able to carry on the operation of the works once he/she becomes responsible for it.

(b) To ensure the transfer of the information the purchaser should consider the inclusion of a clause in the contract requiring the operations manager to prepare and deliver a plant organization study within an agreed time limit. Such a study could, **inter alia**, describe the optimal managerial, administrative and financial systems to be employed, provide a detailed study of the production capacity of the works and how this can be maximized, set out the methods of achieving and maintaining quality, detail the possible modifications to be made to the products manufactured, make recommendations about the recruitment and training of personnel and advise on the means of enlarging and developing the operation.

44. Standards (Quality)

(a) The remarks made at paragraph 34 apply here too.

(b) Quality, however, can also be defined in terms of the result. An operations management contract sometimes requires the supplier of those services to carry out his/her obligations in such a manner as will achieve a certain rate of productivity in the works. Where such a provision is included in the contract the operations manager usually requires an opportunity to review the design and construction plans of the factory. Accordingly, if the purchaser wishes to include a provision in his/her contract with the operations manager requiring the achievement of a specified production level, he/she should negotiate the latter contract sufficiently early to allow the operations manager to be involved in the design and construction plan of the factory.

45. Personnel

(a) The contract should specify the staff which the operations manager is to provide to carry out his/her obligations under the contract.

(b) If the operations manager is engaged in the training of the purchaser's employees, then the various categories of the purchaser's staff to receive instruction should be specified in the contract.

(c) Depending on whether the operations manager is to act in an advisory capacity or is to be directly responsible for the operation of the works, he/she will need to have more or less authority over the purchaser's employees. The contract should make clear the limits of the operations manager's right to direct the purchaser's staff.

46. Price

The usual methods of calculating an operations manager's fee are those applicable in the case of an industrial architect/engineer (see paragraph 32 above).

F. LICENSING AGREEMENT AND CONTRACT FOR THE TRANSFER OF KNOW-HOW FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY

47. The contract under review here is particularly complex, not only by reason of the legal questions involved but also because of the different natures of the elements concerned - patent and trademark rights and the communication of know-how and technology. Only a few aspects of the contract can be mentioned here and then in general terms. A prospective purchaser from a developing country should consult the WIPO "Licensing Guide for Developing Countries" to obtain an overall view of the items to be included in the contract and for a detailed description of the clauses which can be included in the licensing agreement and contract for the transfer of know-how. (As regards the latter, see also "Guide for Use in Drawing up Contracts Relating to the International Transfer of Know-how in the Engineering Industry", ECE/Trade/222/Rev.1).

48. Scope of the Contract

(a) Should a purchaser desire to manufacture specific products or machinery incorporating a particular technology he/she will need to acquire an industrial property licence. A purchaser from a country without a tradition in industry may also need to obtain assembly or manufacturing know-how. An **industrial property licence** gives the purchaser permission to do certain acts governed by the exclusive rights conferred by law on the holder of a patent of invention, utility model or trademark. The supply of **know-how** is the communication - effected in writing, orally or by demonstration and training - of technical information and skills concerning the use and application of industrial techniques.

(b) The contract assigning such rights and providing for the transfer of know-how should define the aspects of the assembly or manufacture of the products in respect of which the supplier is to grant a licence and transfer know-how. The methods by which the technical information and industrial property rights are to be transferred in each such aspect must be particularized in the contract.

49. Limitations

The transferor of industrial property rights and know-how is entitled - subject to the agreement of the parties - to limit the use to which these can be put by the purchaser. As the value of know-how lies in it or certain aspects of it being secret, the transferor of know-how may require the purchaser not **to disclose** the **information** he/she is acquiring to third parties. Furthermore, both as regards know-how and all other industrial property rights, the transferor of these can limit the purchaser's use of them:

(i) as regards the **territory** in which he/she may exploit them;

(ii) in respect of the **markets** in which he/she can sell the products manufactured using the know-how and industrial property rights;

(iii) in terms of the **time** during which the purchaser is entitled to exploit the know-how and industrial property rights;

(iv) as regards the **fields of activity** in which they can be used.

In addition, the transferor may require the purchaser's undertaking **not to purchase** from **another** source **technology** which competes with that supplied by him/her. For his/her part, the purchaser can require the transferor to undertake not to provide the technology or a licence to a third party operating in a the purchaser's proposed sales' area. Whatever the constraints which the parties agree to impose on one another, these must be detailed in the contract.

50. Developments and Improvements

To be valuable technology must be up to date. In view of the rapidity of technical progress, the purchaser must ensure that the contract takes account of the developments likely to occur in the technology. To that end a provision can be included in the contract stipulating that any improvements or developments in the know-how or the subject matter of any relevant patent or trademark coming into either party's hands will be communicated and rights granted to the other party on specified terms. It is usual for such a clause to exclude from its scope information and rights in developments and improvements which, when incorporated into the products, alter them substantially. Rather, in the latter case, the contract often provides for the purchase of such improvements and developments by one party from the other at a favourable price. (See also paragraph 58 below).

51. Marketing and After Sales Service

When the purchaser does not have available locally expertise in marketing, as is often the position of a purchaser from a developing country, he/she can sometimes make use of his/her close identification with the transferor - an identification which is particularily strong where the parties share a trademark or where the products are described as assembled or manufactured under the transferor's licence. This identification of the parties permits them to pursue jointly various measures - e.g. advertising - to promote the sale of the agricultural machinery in question. If the purchaser's production capacity is anticipated to exceed local demand than he/she should consider including in the contract a provision enabling him/her to use the distribution channels and after sales services developed abroad by the transferor.

52. Warranties and Conditions

(a) The warranties and conditions to be included in the contract for the transfer of industrial property rights and know-how are so varied and numerous that only the most fundamental can be mentioned here (documents such as the WIPO "Licensing Guide for Developing Countries" describe the warranties and conditions whose inclusion should be considered).

(b) The novice purchaser of a technology is not in a position to know in any detail the information, instructions, assistance and industrial property rights necessary to enable him/her to assemble or manufacture certain items of agricultural machinery. His/her weak position in this regard is compounded by the secrecy in which know-how is held. His/her lack of experience and the secrecy mentioned make the purchaser entirely reliant on the transferor's estimate of the purchaser's requirements. The contract must therefore include, amongst the other warranties and conditions, one stipulating that the information to be transferred and industrial property rights assigned will be sufficient to enable the purchaser to assemble or manufacture the products to the same standard of quality and with the same efficiency as the transferor.

53. Price

(a) Payment for industrial property rights and know-how can be made by way of a lump sum, fees or royalties or by a combination of these.

(b) A lump sum may be payable either in one single amount or by instalments agreed upon in the contract, these last at a fixed rate or at a decreasing rate. A purchaser from a developing country will probably have cash flow and currency difficulties. The payment of a lump sum is therefore unlikely to appeal to him/her. If such a lump sum payment is required to be made, then it may be beneficial to the purchaser to limit the amount - leaving the balance of the price to be paid in royalties - and to have any lump sum payable staged over a number of instalments.

(c) **Royalties** are recurring payments, calculated after the grant of the licence and transfer of know-how, the amounts of which are determined by reference to the extent of the exploitation of the know-how and licence. In order to establish the degree of the exploitation of the know-how and licence (so as to be able to calculate the royalties), reference must be made either to the volume of production, the selling prices of the products or the purchaser's profits.

(i) When royalties are payable in respect of each product manufactured, it is usual that the amount of the royalty payable be expressed as a fixed sum, not as a percentage of the cost of manufacture or the selling price. Due to financial constraints a purchaser from a developing country is usually not in a position to make payments in advance of the return to him/her of his/her initial investment in the acquisition of the works. Thus, the payment of royalties on the production of agricultural machinery, before the purchaser has had an opportunity of selling the products, may be an unsuitable method for him/her to employ.

(ii) Royalties related to sales are paid only when each product is actually sold. Where royalties are linked to sales the contract must provide the criterion of calculation to be used to arrive at the "selling price", a percentage of which is payable as a royalty. The "selling price" can be the gross selling price, the net selling price or the fair market price of each product. The use of the gross selling price as the basis of calculating royalties does not favour the purchaser - particularily if the supplier's contribution to the project as a whole is not great - as it includes not only those parts of the products manufactured under the licence or with the aid of the know-how transferred but also those parts produced with technology and skills acquired by the purchaser from other sources. The more advantageous method of calculation for the purchaser is based on the net selling price, that is to say, the selling price less the cost or value of certain items unrelated to the licence and know-how in question. This last method of payment of royalties most accurately reflects the contribution of the supplier to the manufacture of the products. To ensure the payment of maximum royalties even in the event that the purchaser sells the products he/she manufactures or assembles at an unreasonably low price, contracts sometimes provide that the "selling price" is to be deemed the "fair market price" as defined in the contract.

(iii) Where royalties are ascertainable by reference to the purchaser's profits, no royalty payment is due until the enterprise begins to make a profit from sales of the agricultural machinery produced. This method of calculating royalties is usually the most favourable to the purchaser (with the system of calculating royalties on the net selling price running second favourite). However, the transfor may be reluctant to accept such a method of calculation unless he/she is reasonably convinced of the likelihood of early profits to the purchaser's operation. Such a conviction does not usually come about unless the transferor has some involvement in the initial management of the works.

(d) The **fees** payable for technical assistance may be included in the lump sum and /or royalties payable. If they are not, then such fees are likely to be payable on the basis of one of the methods described in paragraph 33 above.

PART III

This Part outlines some of the clauses usually included in international contracts.

54. Recitals

Contracts often contain a preamble consisting of recitals which describe the business background of the parties, explain the reasons for the agreement and state the purposes and objectives of the contract. As circumstances require, the recitals can also contain representations as to the expertise of the supplier, the inexperience of the purchaser, the ownership of industrial property rights etc.. The recitals serve to describe, if very briefly, the setting and conditions in which the agreement has been concluded. A preamble may - depending on the legal system considering it - assist in interpreting the intentions of the parties as to all or part of the contract in any later dispute. Recitals can be beneficial and should be included in the contract.

55. Definitions

The definition at the outset of the contract of certain phrases or descriptions which appear frequently in the contract enables an abbreviation to one or more words of those phrases and descriptions so as to facilitate an understanding of the substantive clauses of the contract. Such definitions serve not only to abbreviate but also make for precision of language, something particularily desirable in international contracts where language barriers and differences in the legal systems governing the parties may of themselves cause misunderstandings.

56. Substantive Transaction

It is as well to include in a contract a general clause describing the "give and take" of the agreement. Such a clause is not intended to be exhaustive in dealing with the goods or services to be supplied on the one hand or the purchase price or other benefits passing to the supplier on the other; its purpose is to establish a fair exchange between the parties.

57. Entry into Force, Commencement and Completion

It is important to specify in the contract the date upon which it is to enter into force, that is to say, the date upon which it is to become operative and binding on the parties. In the absence of a provision in that regard, it is usually deemed that the contract was intended to come into force on its signature by the parties. If the contract's entry into force is to be dependant upon the fulfillment of certain conditions, these must be specified in the contract. The date upon which the supplier or transferor is to commence performance of the contract, the term during which such performance is to be carried out and the date upon which it is to be completed or, where such dates are dependant upon the fulfillment of certain conditions, those conditions, must be stated in the contract. The date upon which the purchaser is to deliver the consideration - the purchase price or other benefits - is normally specified in a clause dealing with all the aspects of payment.

58. Ownership of Documentation

It is usual for contracts to provide that the party supplying documentation or information is to retain ownership of that documentation or information save to the extent that it is otherwise stipulated in the contract. In this regard, however, the purchaser should ensure that the contract does, in fact, secure to him/her the ownership of all the

specifications, instructions, drawings and other information relating to any improvements or developments, including adaptations, developed by the purchaser in the products to be manufactured or technology to be transferred.

59. Standards

(a) As has been mentioned (see paragraph 16 above) a contract should couple provisions of general application with those of a detailed nature. In order to ensure a degree of quality in those aspects of the goods or services not specifically adverted to in the contract, the purchaser should seek to import to the contract some overall system of standards and quality.

(b) Many trades and professions have established codes of conduct and of standards. In addition, in some countries the suppliers of certain goods and services are required to adhere to standards established by law. The purchaser should consider defining as the overall standards to be employed in the performance of the contract those of the supplier's trade or professional association or those defined in the legislation of the supplier's country if these are more stringent than those applicable in the purchaser's country.

(c) Whatever system of standards or quality is chosen - one provided by the legislature in the purchaser's country or by an association or the legislature in the supplier's country - it is important that standards of general application be specified in the contract as applicable to the goods to be supplied or services to be rendered.

60. Price

(a) Payment for goods and/or services can be made in cash or in goods or services or both. Where payment is made in goods these usually consist of raw materials or the completed products manufactured with the aid of the goods or services provided by the supplier.

(b) In addition to the usual provisions regarding payment by the purchaser - the amount, the time for payment and the interest rate (if any) on late payments - international contracts must also take into account such matters as the currency in which cash payment are to be made.

61. Assignment

The purchaser should consider how far he/she desires to limit the assignment by the supplier of the whole or part of the contract. Should such an assignment take place the original supplier will be relieved of his/her responsibility to the purchaser leaving the latter to look to the assignee for such performance. It is therefore usual to provide in the contract that the supplier may not assign the contract in whole or in part without the written consent of the purchaser. If the contract stipulates that the supplier must, when seeking the purchaser's consent, name the proposed assignee, then the purchaser will have an opportunity of investigating the latter before giving or refusing his/her consent.

62. Sub-Contracting

Where a contract or part of it is sub-contracted by a supplier, the latter remains liable to the purchaser for the services or goods provided by the sub-contractor. Accordingly, the purchaser is not so much concerned with the principle of whether or not the supplier should be permitted to sub-contract as with the conditions to be attached to this. The issue in clauses relating to sub-contracting is usually in whom the choice of sub-contractor is to lie. In the conditions in which contracts between a purchaser from a developing country and a supplier from a developed country are concluded the best option is, perhaps, that of inviting the supplier to propose sub-contractors subject to certain conditions which frame the manner in which the choice is to be made

and subject also to the purchaser's veto. Thus, the contract can provide that, in drawing a list of potential sub-contractors for the purchaser's approval the supplier must take into consideration contractors in the purchaser's country and must present the purchaser with an evaluation of the relative merits of the sub-contractors he/she nominates.

63. Security of Performance

It is quite common for purchasers to seek to ensure the supplier's performance of his/her obligations under the contract by withholding as security that portion of the consideration payable to the supplier which is equivalent to all or a part of the liquidated damages which may become due under the contract until the expiry of the guarantee. An alternative or additional form of security sometimes adopted is that of requiring the supplier to furnish a conditional letter of credit or other bank guarantee in the amount of all or a part of the maximum liquidated damages which may become due from the supplier under the contract. Where damages and not liquidated damages are the sanction against the supplier's non-performance then the amount withheld or payable on foot of the bank guarantee should be a sum which would constitute realistic compensation to the purchaser. (See also UNCITRAL document A/CN.9/WG.V/WP.13/Add.6 "Security for Performance".)

64. Failure to Perform (Breach of Contract)

(a) International contracts should provide what are to be the consequences of a failure of the parties to perform their contractual obligations even if the law intended to be applicable to the contract specifies such consequenses.

(b) Contracts usually provide a number of escalating remedies to the purchaser for the supplier's failure to perform, the choice of remedy being dependant upon the degree of significance attached to a particular failure. Thus in cases of delay the supplier may be required to pay damages or liquidated damages (or penalties) initially but if the delay continues beyond a certain period, the purchaser may be entitled to terminate the contract. Similarly, where the supplier fulfills his/her obligations in a defective manner the purchaser may be entitled to require the supplier to rectify the defects. If such rectification is not carried out the contract usually empowers the purchaser to terminate the contract and to receive damages or, as in the case of a failure to attain certain production and quality parameters, liquidated damages, from the supplier.

(c) If the purchaser delays in the performance of his/her obligations - i.e. the payment of the purchase price - the supplier usually has the right to be compensated for any losses sustained by him/her - e.g. the receipt of interest on late payments - and, ultimately, if the purchaser fails to perform his/her obligations, the supplier may be entitled to terminate the contract. (See also UNCITRAL document A/CN.9/WG.V/WP.11/Add.3 "Failure to Perform").

65. Force Majeure

Events which are outside the control of the parties may occur or circumstances similarily outside the parties' control may change so as to delay or render impossible performance of the contract or increase the risks or expenses involved in such performance. Contracts usually contain a clause stipulating that a party is not liable for his/her failure to perform any of his/her obligations under the contract if that failure is due to a change of circumstances or the occurence of an event -

(i) coming about after the signing of the contract,

(ii) which could not reasonably have been foreseen at the date of signing of the contract, and

(iii) which is beyond the control of the party claiming relief under that clause.

Should the parties wish to define or describe the circumstances or events whose alteration or occurence will entitle the affected party to relief, it would perhaps be wise to include a provision in more general terms and to refer to the list of events and occurences as illustrative and not exhaustive (see paragraph 16 above). The **force majeure** clause can also stipulate a procedure to be adopted should one of the parties believe that circumstances or events such as those described are about to alter or occur. The ultimate stage of that procedure could be the employment of the machinery for the settlement of disputes provided in the contract (see paragraph 66 below). The use of such an anticipatory procedure may enable the parties to avoid later disruptive disputes.

66. Termination

There may be circumstances in addition to those mentioned above at paragraphs 63 and 64 in which the parties may agree to allow the unilateral suspension or termination of the contract, e.g. for the convenience of the purchaser. The parties should stipulate specific circumstances or reasons which will enable such suspension or termination and the procedure to be adopted. It is usual for contracts to provide that where some item has been made a condition (as opposed to a warranty) of the contract that the non-fulfillment of that condition will entitle the effected party to terminate the contract. It must be noted that the termination of a contract does not relieve the offending party of his/her liability to the other in damages. (See also UNCITRAL document A/CN.9/WG.V/WP.9/Add.5 "Termination".)

67. Settlement of Disputes

(a) As has been said, the parties rights and liabilities should be determined in the contract so far as possible so as to eliminate areas of potential dispute. At the time the contract is concluded, however, it is not possible to foresee all the difficulties which may arise in giving effect to the contract. Where later differences between the parties cannot be resolved by reference to the contract or by negotiation the parties must resort to external procedures. The contract should make due provision for these. There are a number of procedures commonly used.

(b) It is now not unusual for contracts of a specialized nature - e.g. for the transfer of technology - and contracts for the construction of works to provide for the appointment of an **independent expert** to whom disputes can be referred quickly and informally. The opinion or recommendation given by such an expert in disputes referred to him/her can facilitate an early resolution of those disputes.

(c) The parties to a contract are both interested in resolving their disputes without recourse to lengthy and costly arbitral or judical proceedings. They may, therefore, agree to institute a **conciliation** procedure to be implemented before any proceedings can be commenced. The aim of conciliation is to reach an amicable settlement of the dispute with the aid of an intermediary. The latter does not adjudicate between the parties but, rather, assists the negotiations by giving impartial advice. If the parties wish to provide for such a conciliation procedure they can either detail it in the contract or adopt a procedure designed by a third party, e.g. the UNCITRAL Conciliation Rules.

(d) International contracts today almost invariably contain a clause providing for **arbitration** as the forum for ultimately settling disputes. One reason why arbitration is favoured over judical proceedings is because, in consequence of a number of international conventions, arbitral awards can be more easily enforced than judical decisions.

Particular attention must be paid to the wording of an arbitration clause. If arbitration between the parties becomes necessary this is made easier if the arbitration procedure is provided in the contract either by it being detailed in the arbitration clause or by importing to the contract the rules of arbitration established by an international body, e.g. UNCITRAL, International Chamber of Commerce etc..

(e) As an alternative to the submission of their disputes to arbitration the parties may choose to have these dealt with in proceedings instituted before a judicial tribunal. If such is the parties' choice, the contract should state the country whose Courts are to have juristiction in disputes between the parties. It is usually better to choose a country with a real connection with the contract. There are a number of considerations to be taken into account in making that choice. For example, the costs of any litigation will be reduced for the purchaser if the Courts in his/her country are designated those with juristiction. On the other hand, the purchaser's position may be strengthened if proceedings are brought in the supplier's country as the supplier may find any publicity attached to such proceedings embarrassing.

(f) Some contracts for the construction of industrial works provide that the supervising engineer/architect shall adjudicate on certain issues between the parties (see paragraph 32 above). It is usual to provide that the decision of the architect/engineer, where such authority is vested in him, will be subject to an appeal by either party to arbitration or judical proceedings.

68. Applicable Law

Despite the parties' efforts in clarifying their rights and liabilities in the contract, there may be matters not dealt with which require a legal framework within which they can be adjudicated upon. The contract should specify the state whose legal system is to apply to the contract. In theory the parties are free to choose whatever legal system they wish. In practice, however, there are a number of limitations, e.g. some legal systems do not admit the application of another if the former has juristiction over one of the parties or over the contract, some contracts requiring government approval will be refused such approval if they contain a provision making applicable the law of another country. Customarily, either the law of the purchaser or of the supplier's country or, if different, the country in which the contract is to be performed is chosen as the applicable law. It is in the purchaser's interest to have nominated as the legal system applicable one which has developed consumer legislation. Accordingly, the purchaser should investigate the extent to which his/her interests are protected under different legal systems and seek to have that which affords him/her the best protection made applicable.

69. Language

If the contract or any of its auxillary documents are drawn up in more than one language, the contract should state which is the ruling one. Furthermore, the contract should specify the language to be used in its implementation as regard correspondance and the giving of instructions.

1. The majority of the UNCITRAL (United Nations Commission on International Trade Law) documents referred to in these Guidelines form part of the Draft Guide on Drawing Up Contracts for Construction of Industrial Works. The Chapters mentioned are:

"Choice of Contracting Approach"	A/CN.9/WG.V/WP.15/Add.8
"Damages"	A/CN.9/WG.V/WP.11/Add.4
"Scope and Quality of Works"	A/CN.9/WG.V/WP.13/Add.1
"Failure to Perform"	A/CN.9/WG.V/WP.11/Add.3
"Security for Performance"	A/CN.9/WG.V/WP.13/Add.6
"Termination"	A/CN.9/WG.V/WP. 9/Add.5

In addition, document A/CN.9/WG.V/WP.7/Add.3 "Maintenance and Spare Parts"[1/] is referred to in these Guidelines.

2. The ECE (Economic Commission for Europe) Guides referred to in these Guidelines are:

"Guide on Drawing Up Contracts for Large Industrial Works"	ECE/Trade/117
"Guide on Drawing Up International Contracts on Consulting Engineering, Including Some Related Aspects of Technical Assistance"	ECE/Trade/145
"Guide for Use in Drawing Up Contracts Relating to the International Transfer of Know-How in the Engineering Industry"	ECE/Trade/222/Rev.1
"Guide on Drawing Up International Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works"[2/]	(ECE)Trade/GE.1/R.32

3. The "Licensing Guide for Developing Countries" is a United Nations, World Intellectual Property Organization document.

4. The Final Act of the United Nations Conference on Contracts for the International Sale of Goods (No.A/Conf.97/18) is also mentioned in the Guidelines.

These documents are available from the United Nations, Sales Section, New York or Geneva.

5. The document "Legal Aspects of Industrial Training" is available from the United Nations Industrial Development Organization, Sales Section, Vienna.

1/ A new Chapter of the UNCITRAL Draft Guide entitled "Supplies of Spare Parts and Services After Completion of the Works" is to be published shortly.

2/ For the present, this document is designated "Restricted".

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COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS FOR THE INITIAL MANAGEMENT OF A FACTORY FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY AND THE RENDERING OF TECHNICAL ASSISTANCE ANCILLARY THERETO*

Prepared by

Ruth Fitz Gerald
UNIDO Consultant

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The purpose of this document is to draw together the various types and versions of the clauses contained in drafts and precedents of the contract under consideration. It is essentially a research document, drawing on existing material and not seeking to furnish any new ideas on the possible approaches to issues in contractual relations.

The headings of the contract clauses dealt with in this document appear in the middle column of the "Contents" on the next page. The clause numbers are given in the right hand column. Reference is then made in the left hand column to the "Status" of the clauses considered. The letters "N", "R" and "O" stand for "Necessary", "Recommended" and "Optional" respectively. This classification indicates the degree of importance attached to the inclusion in the contract of a clause dealing with the issue raised in the corresponding clause heading. Thus, it is felt, a clause whose heading is assigned the status "Necessary" should appear in some form in the contract, even if it is not included in terms of any of the examples provided in this document.

On the page following the "Contents" there is an example of the preamble sometimes included in contracts. The recitals contained in a preamble serve to describe, if very briefly, the setting and conditions in which the agreement between the parties has been concluded. Under legal systems which take preambles into account, these can be of assistance in interpreting the clauses of contracts should a dispute later arise. Some legal systems, however, ignore the recitals contained in the preamble to a contract.

The major part of this document is given over to samples of the clauses which can be included in the contract under consideration. The examples appear in tabulated form. In some instances only one example is given of the possible terms of a clause dealing with the issue raised in the clause heading (left hand column of the table), in others two or three examples are provided. The fifth column, headed "Additions", contains extra material which supplements rather than replaces the examples given of a particular clause. The last column of the tables indicates, in abbreviated form, the sources from which the examples and additions have been generally drawn. The sources referred to above are set out in full in the last page of this document.

As recommended by the Second Consultation on the Agricultural Machinery Industry, the sources drawn from include the documentation considered by that Consultation, the views expressed on it, other relevant national and international material, the views of the participants in the Consultation and other interested parties and the experience gained by the Secretariat in work on contractual agreements.

Clauses	Headings	Status
1	Definitions	R
2	Substantive Transaction	N
3	Entry into Force	R
4	Preliminary Obligations	N
5	Supplier's Obligations	N
6	Orders	O
7	Packing	R
8	Technical Documentation and Tool Kits	R
9	Dispatch, Transport and Delivery	N
10	Delays in Delivery	N
11	Delays in the Purchaser's Acceptance of Delivery	O
12	Verification of Apparent Conformity	R
13	Prices	N
14	Payment	N
15	Warranties	N
16	Guarantee	O
17	Purchaser's Undertaking	R
18	Third Party Indemnity	R
19	Import and Export Licences and Taxes	O
20	Ownership of Documents	R
21	Change Orders	R
22	Assignment	R
23	Notices	N
24	Termination	N
25	Rights at Termination	N
26	Force Majeure	R
27	Limitation of damages	R
28	Language	R
29	Resolution of Disputes	R
30	Applicable Law	N
31	Duration of the Contract	O

Spare parts	OO

THIS AGREEMENT is made BETWEEN of
(hereinafter called "the purchaser") and of
(hereinafter called "the supplier")

WHEREAS: -

1. The purchaser is desirous of commencing a business in the supply of spare parts for, and the maintenance and repair of, agricultural machinery;

2. The supplier has, for a considerable number of years, carried on the business of the manufacture and supply of spare parts for, and the maintenance and repair, of agricultural mahcinery and -

(a) possesses substantial valuable knowledge of a specialized nature relating to the methods and techniques in the operation and management of the business of the supply of spare parts for, and the maintenance and repair, of agricultural machinery, and continues to acquire information, skills, expertise and reputation relative to the supply of spare parts, for and the maintenance and repair of, agricultural machinery
(b) has acquired substantial knowledge, skill and expertise in the efficient and proper management and operation of the business of supplying spare parts for, and the maintenance and repair of, agricultural machinery and, in particular, in the most efficient and optimum methods of initiating and establishing such a business;
(c) has acquired expertise in the training of personnel for the management and operation of such a business;

3. The purchaser is desirous of acquiring spare parts for agricultural machinery from the supplier and of acquiring and having the advantage of all the supplier's said and future technical knowledge, expertise, information and skill in the management and operation of the business of the supply of spare parts and the maintenance and repair of agricultural machinery.

4. The supplier is mindful that the purchaser has available to him/her in his/her own country a lesser tradition in industry, trade and business than has the supplier and that the consummation of this agreement is intended to aid and be in the interests of the industrial, trade and economic development of the purchaser's country.

Now, in CONSIDERATION of the premises and of the mutual covenants and conditions hereinafter contained, the parties hereto have agreed and do by these presents agree as follows:-

DEFINITIONS
R

1.1 For the purposes of this contract the following words shall be interpreted thus: -

- "assemblies and sub-assemblies" - components of the products which are manufactured by the supplier or, in the case of authorized components, for him/her, and which are supplied in an assembled form and classified under one heading in the supplier's catalogue.

- "authorized components" - spare parts, assemblies and sub-assemblies manufactured by a person other than the supplier for the supplier or for distribution by him/her and which are included in the supplier's catalogue

- "conformity" - the presence in the spare parts of all the conditions of quality, fitness, merchantability and compliance with the specifications as warranted in this contract.

- "contract" - this agreement including all the appendices and attachments hereto and all documents referred to in this contract

- "products" - all the equipment, machinery, accessories and other apparatus present in the purchaser's country which incorporates or uses the spare parts.

- "spare parts" - those parts, including assemblies, sub-assemblies, and authorized components, of equipment, machinery, accessories and other apparatus now listed in the suppier's catalogue, and manufacture by him/her or, in the case of authorized components, ditructued by him/her, together with any other parts manufactured by the supplier in the future or in the case of authorized components, distributed by him/her, together with any other parts manufactured by the supplier in the future or in the case of authorized components, distributed by him/her during the currency of this contract.

- "specifications" - The standards and performance indicators of the spare parts particularized in Appendix ... . "Specifications" also refers to the descriptions of the spare parts, their characteristics, quality and performance capacities as stated by the supplier.

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
SUBSTANTIVE TRANSACTION N	2.1 Subject to the terms of this contract, the supplier shall sell and deliver to the purchaser at the latter's request the spare parts the subject matter of this contract and shall afford the purchaser the advice hereinafter specified in consideration of the payment by the purchaser of the purchase prices from time to time applicable in accordance with this contract in respect of the said spare parts (where applicable add: ..... and in consideration of the purchaser's undertaking hereinafter given).	2. Subject to the terms of this contract, the supplier will sell and deliver to the purchaser at the latter's request the spare parts the subject matter of this contract and will provide the purchaser with technical assistance to enable the purchaser and his/her employees to fit, adapt and repair the products and the spare parts in consideration of the payment by the purchaser of the purchase prices form time to time applicable in accordance with this contract in respect of the said spare parts (where applicable add: - ... and in consideration of the purchaser's undertaking hereinafter given).			Ex. II ID/WG.400
ENTRY INTO FORCE R	3.1 This contract shall enter into force on its signature by the parties or, if signed separately, on the signature of the last subscribing party.				
PRELIMINARY OBLIGATIONS R	4.1. Within a period of days/weeks of the entry into force of this contract the supplier shall investigate the stock of products and spare parts present in the purchaser's country and shall determine the type and number of spare parts to be held by the purchaser in order to establish a level of stock which would be considered necessary in good trading practice in the business of the supply of spare parts having regard to the products present in the pruchaser's country, any orders for products as yet unfulfilled of which the supplier is aware, the existing stock of spare parts in the purchaser's country and the time required for the fulfillment of orders for spare parts.		4.1. Within days/weeks of the entry into force of this contract the supplier will recommend to the purchaser, by notice in writing, the number and type of spare parts which the supplier judges are necessary to be held by the purchaser in order to constitute a stock level which in good trading practice in the business of the supply of spare parts would be considered necessary having regard to the number of products present in the purchaser's country and the stock of spare parts existing in the purchaser's country.		Ex. I ID/WG.400/ Ex. III Japan
	4.2. The supplier shall, within a period of days/weeks from the entry into force of this contract:	4.2. The supplier shall, within a period of days/weeks from the entry into force of this contract:	4.2. The supplier shall, with all reasonable speed after receipt of the purchaser's first order deliver the spare parts thus ordered by the purchaser and, further, shall furnish the purchaser with		Ex. I+II ID/WG.400/ Ex. III YDE Co.Ltd Japan

HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE

	(a) deliver to the purchaser, in accordance with the provisions hereinafter appearing, the spare parts required to establish the necessary stock level referred to in sub-paragraph 1, and (b) give to the purchaser advice and information to enable the purchaser to evaluate the said stock level and his/her future requirements.	(a) deliver to the purchaser, in accordance with the provisions hereinafter appearing, the spare parts required to establish the necessary stock level referred to in sub-paragraph 1, and (b) concurrent with or within days/weeks of the said delivery of spare parts the supplier shall, at his/her own expense, send to the purchaser's country the skilled staff specified in Annex of this contract which staff will, at the supplier's expense, spend a period of weeks/months in the purchaser's business training the purchaser and his/her employees in the skills necessary for the management and operation of a business for the maintenance and repair of the products and the sale, promotion and fitting of the spare parts.	advice and information to enable the purchaser to evaluate his/her additional or furture requirements.		
	4.3. The supplier will, within days/weeks of the entry into force of this contract furnish to the purchaser the documentation listed in Appendix of this contract.				Ex. I+II ID/WG.400
	4.4. During the period of months from the date of delivery of the spare parts referred to in subparagraph 2 the purchaser shall be entitled to return all and any of the said spare parts then not used, sold or damaged by the pruchaser and the supplier shall accept such a return paying to the purchaser or crediting the purchaser with the prices of the said returned spare parts.	4.4. During the period of months from the date of delivery of the spare parts referred to in sub-paragraph 2 the purchaser shall be entitled to return all and any the spare parts then not sold, used or damaged by the purchaser and the supplier shall accept such a return paying to the purchaser the total of the purchase prices of the said returned spare parts and the costs and expenses paid by the purchaser in their regard.			
SUPPLIER'S OBLIGATIONS N	5.1. In addition to the spare parts delivered by the supplier in accordance with Clause 4 hereof the supplier shall deliver to the purchaser the spare parts ordered by the latter during the period of years (herein				Ex. I ID/WG.400/ + Netherl

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	referred to as "the currency of this contract") from the entry into force of the contract. 2. (a) The supplier shall not during the currency of this contract discontinue the supply of any of the spare parts listed in his/her catalogue at the date of the purchaser's signature of this contract save and unless he replaces the said spare part with one having an identical function and meeting the specifications detailed in Annex of this contract. (b) Should the supplier, during the currency of this contract, manufacture or distribute spare parts in addition to or in replacement of the spare parts appearing in the supplier's catalogue at the date of the purchaser's signature of this contract, the supplier shall inform the purchaser thereof immediately such new or replacement spare parts are marketed. (c) The provisions in this contract regarding the prices of spare parts shall apply in respect of any new or replacement spare parts. 5.3. The supplier shall, at his/her own cost, furnish the purchaser with a detailed list of the spare parts comprised in any product manufactured by him/her and exported to the purchaser's country and shall provide the purchaser with assistance in establishing a necessary stock level in respect of each new type of product manufactured by the supplier and exported by him/her to the purchaser's country. 5.4. The supplier will grant the purchaser the benefit of the status of most favoured customer.				
ORDERS O	6. In the usual course the purchaser shall place orders by remitting the same to the supplier by registered post. Should the purchaser require the delivery of any spare part as a matter of urgency, the pruchaser shall be entitled to use the fastest means available to inform the supplier thereof but will follow-up such an order with one delivered by registered post. The supplier undertakes to give the purchaser what assistance he/she can render in ensuring a speedy delivery of such spare parts as are required urgently.				Ex. I 6 ID/WG.400/2

PACKING R	7.1. The references to the prices of spare parts in this contract include the packing of the said spare parts in accordance with this Clause.	7.1. The supplier shall pack the spare parts in accordance with his/her standard conditions of sale. The cost of any additional packing required will be borne by the purchaser. The purchase prices of the spare parts quoted in this contract include only such packing as is indicated in the supplier's standard conditions of sale.			Ex. I 7 ID/WG.400/2 Ex. II 7 YDE Co.Ltd., Japan
	7.2. The supplier shall pack the spare parts in the manner required to prevent their damage or deterioration during transit to their final destinatination. The packing shall be sufficient to withstand, without limitations, rough handling, exposure to extreme temperatures, salt and precipitation and open storage during transit, and the possibility that the spare parts will be stored for a lengthy period at their port of unloading.	7.2. The requirements of the packing of the spare parts will be decided by the supplier and the purchaser jointly.			
	7.3. The markings within and outside the packages and the instructions, if any, of the packed spare parts must be indicated by diagrams and accompanied by instructions in the purchaser's language.	7.3. The instructions, if any, of precautions to be taken in the handling of the packed spare parts and the markings within and outside the packages will be in an international language.			
	7.4. The supplier will be liable for any damage caused to the spare parts by reason of any fault in the materials or design of the packing, marking or instructions.	7.4. Once the source of any damage caused to the spare parts by reason of any fault in the material or design of the packing, the markings or instructions, has been identified, the parties will negotiate a settlement of the purchaser's claim in respect of such damage.			
TECHNICAL DOCUMENTATION AND TOOL KITS R	8.1. The supplier shall ensure that each batch of any one spare part is accompanied by a free copy of the descriptive and instruction manual necessary for the fitting and operation of the said spare parts and, where appropriate, by a copy of the technical data sheet relating to the said spare parts in the purchaser's language (or in the language).				Ex. I 8 ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	8.2. The supplier will also provide, free of charge with each batch of any one spare part, a tool kit containing such implements or tools as are necessary for the proper fitting, operation, maintenance and repair of each type of spare part and of which the purchaser could not reasonably be expected to be in possession. 8.3. The supplier will furnish the purchaser with the documents listed in Appendix of this contract at intervals.				
DISPATCH TRANSPORT AND DELIVERY N	9.1. On receipt of orders from the purchaser the supplier shall, with due speed and efficiency, dispatch the spare parts ordered to the pruchaser. 9.2. Delivery of the spare parts shall be made FOB, CIF etc. as may from time to time be agreed between the parties and the supplier shall notify the purchaser in good time of the quantities of spare parts to be delivered, their packed size and weight and of the proposed method of transport and details thereof.				Ex. I 9 YDE Co.Ltd., Japan Ex. II 9 ID/WG.400/2
	9.3. The provisions regarding transport, the payment therefor, delivery, insurance and passing of risk laid down in INCONTERMS will apply to this Clause.	9.3. The supplier will arrange for and bear all the costs and expenses of the transport of the spare parts from his/her factory to the deemed delivery of the products.			
	9.4. Where the supplier is required to affect delivery under terms not dealt with in INCOTERMS, the supplier shall be required to meet all transport, storage and insurance expenses until delivery.	9.4. The supplier shall arrange and pay for the insurance of the spare parts to the point of their deemed delivery and, if necessary, will name the purchaser the beneficiary of the policy. The spare parts will be insured in a freely convertible currency against loss and damage incidental to manufacture or acquisition, transportation, storage and delivery. The insurance shall be in an amount equal to 110% of the CIF value of the spare parts from "warehouse to warehouse" on an "all risks" basis, including war risks and strike clauses.			

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	9.5. Delivery of the spare parts will not be deemed unless and until all the necessary documentation relating to them and their transport has been received by the purchaser. Should the spare parts arrive at their final destination before the said documentation has been received by the purchaser, the supplier will be responsible for any consequent loss.	9.5. Delivery of the spare parts shall be deemed on the arrival of the said spare parts at the purchaser's address specified in Annex of this contract provided that delivery of the spare parts will not be deemed unless and until all the necessary documentation relating to them and their transport has been received by the purchaser. Should the spare parts arrive at their final destination before the said documentation has been received by the purchaser, the supplier will be responsible for any consequent loss. 9.6. The spare parts shall remain at the risk of the supplier until delivery thereof has been completed.			
DELAYS IN DELIVERY N	10.1. In the usual course delivery of spare parts will be effected by the supplier within days/weeks of his/her receipt of the purchaser's order. In the case or urgent orders, the spare parts will be delivered within days/weeks of the supplier's receipt of the purchaser's notification of his/her order. 10.2. Should the supplier fail to make delivery of the spare parts within the time fixed therefor there shall be granted to the supplier an extension of the delivery period of days. 10.3. If the supplier fails to deliver the spare parts within the fixed time for delivery or within the extension thereof mentioned at subparagraph 2 of this Clause, the purchaser shall be entitled, upon giving to the supplier within a reasonable time notice in writing, to claim a reduction of the prices payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that the purchaser has suffered no loss. Such a reduction shall equal % of the prices payable under the contract which are property attributable to the spare parts which cannot, in consequence of the said failure, be put to the use intended for each compelte week of delay commencing on the due date of delivery, but shall not exceed the maximum of % of	10.3. If the supplier fails to make delivery within the said period of grace then the said delay in the performance of the supplier's delivery obligations will render the supplier liable to the following sanctions: - the imposition of liquidated damages; - termination of the contract for default (if applicable add ... and forfeiture of its performance security).			Ex. I 10 ECE/574, ADB/I-ADB/WB + ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	the purchase prices attributable to the spare parts so delayed. 10.4. Such a reduction shall be allowed when a payment becomes due or after delivery. Save as provided in subparagraph 5 of this Clause such a reduction shall be to the exclusion of any other remedy of the purchaser in respect of the supplier's failure to deliver as aforesaid. 10.5. If any portion of the spare parts in respect of which the purchaser has become entitled to the maximum reduction provided by subparagraph 3 of this Clause or in respect of which he/she would have been entitled had he/she given the notice referred to therein, remains undelivered, the purchaser may by notice in writing to the supplier, require him/her to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable taking into account such delay as has already occurred. If for any reason whatever, the supplier fails within such time to do everything that he/she must do to effect delivery, the purchaser shall be entitled by notice in writing to the supplier to terminate the contract in respect of such portion of the spare parts as are not delivered. 10.6. The purchaser shall, upon such termination, be entitled to receive from the supplier any loss suffered by the purchaser by reason of the failure of the supplier aforesaid up to an amount not exceeding the purchase prices and purchaser's expenses, properly attributable to such portion of the spare parts, as could not in consequence of the supplier's failure, be put to the use intended.				
DELAYS IN THE PURCHASER'S ACCEPTANCE OF DELIVERY 0	11.1. Should a delay in delivery be caused by an act or omission of the purchaser, and whether such cause shall occur before or after the time or the extended time for delivery there shall be granted, subject to sub-paragraph 3 of Clause 10, such extension of the delivery period as is reasonable having regard to all the circumstances of the case. 11.2. If the purchaser fails to accept delivery on the due date he/she shall nevertheless make payment conditional upon				Ex. I 11 ECE/730

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	delivery as if the spare parts had been delivered. The supplier shall arrange for the storage of the spare parts at the cost and risk of the purchaser provided that if the supplier is in a position to store the spare parts in his/her premises without prejudice to his/her business, the cost of storing the spare parts will not be borne by the purchaser. 11.3. The supplier may require the purchaser by notice in writing to accept delivery within a reasonable time. Should the purchaser fail to do so within such a time, the supplier shall be entitled by notice in writing to the purchaser to terminate the contract in respect of such portion of the spare parts as is by reason of the failure aforesaid not delivered and thereupon to recover from the purchaser any loss suffered by reason of such failure up to an amount equal to the prices payable under the contract which are properly attributable to such a portion of the spare parts.				
VERIFICATION OF APPARENT CONFORMITY E	12.1. The purchaser and, where appropriate, a representative of the supplier shall inspect each consignment of spare parts on its arrival at the point of delivery in order to verify the contents of each consignment. If any such consignment does not contain the spare parts ordered by the purchaser then: (a) the purchaser shall pay the prices of the spare parts ordered and delivered or, if payment has already been made, shall be credited with that sum by which the payment exceeds the total of the prices of spare parts ordered and delivered. (b) the provisions of Clause 10 shall apply in respect of spare parts ordered but not delivered. 12.2. During a period of weeks/months from the date of delivery of the spare parts the purchaser shall be entitled to reject any spare part which does not conform to this contract (excepting any defect caused after the passage of risk) provided that before the purchaser can exercise his/her right of rejection he/she shall afford the supplier an opportunity of inspecting the said spare part and to make good any defect at his/her expense within a reasonable period.	12.2. The spare parts will be inspected to confirm their conformity with this contract on the occasion that each such spare part is put into use. The purchaser shall be entitled to reject any spare part which does not conform to this contract (excepting any defect caused after the passage of risk) provided that			Ex. I 12 ECE/730 + ID/WG.400/2 Ex. II 12.2 ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		before the purchaser can exercise his/her right of rejection he/she shall afford the supplier an opportunity of inspecting the said spare part and to make good any defect as his/her expense within a reasonable period.			
	12.3. The purchaser's right of rejection shall also apply to spare parts which, although delivered and accepted after the time allowed for rejection, cannot properly be used without the spare parts mentioned at sub-paragraph 2 hereof. 12.4. The supplier shall be entitled to have rejected spare parts returned to him/her at his/her own risk and expense. 12.5. The spare parts shall be deemed to have been finally accepted when the period for rejection provided in this Clause has passed without the purchaser exercising his/her right in that regard.				
PRICES N	13.1. (a) The spare parts will be sold and delivered to the purchaser at the prices appearing in Annex ... of this contract subject to the provisions for price revision herein contained. (b) Any spare part introduced by the supplier by way of replacement of any spare part included in the list of spare parts appearing in Annex ... of this contract shall be sold and delivered at the price of the spare part which it replaces prevailing on the date of such replacement subject to the provisions regarding price revision hereinafter appearing. (c) Any new spare part introduced by the supplier other than as hereinbefore provided shall be sold and delivered at the price fixed by the supplier on its introduction and subject to the provisions regarding price revision hereinafter appearing. 13.2. The price of any spare part may be increased in accordance with sub-paragraph 3 hereof by the supplier on the 1st of January of each year during the currency of this contract provided that any price so increased will remain fixed for a period of 12 months.				Ex. I 13 ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	13.3. Any increase in the price of any spare part in accordance with sub-paragraph 2 hereof shall not exceed the average percentage for the year in question of the full range of general export prices for the products, spare parts, assemblies and sub-assemblies manufactured by the supplier. 13.4. The price of any spare part may be reduced at any time. 13.5. Any increase in the price of spare parts which the purchaser consideres excessive shall be justified and reconsidered by the supplier.			13. Notwithstanding anything hereinbefore contained in this regard the supplier shall be entitled to increase the prices of spare parts if a violent change in the international economic situation occurs. A violent change in the international economic situation will be deemed to exist only when the cost of living index in both the supplier and the purchaser's country has, at the end of a six month period, increased by an amount in excess of %.	Add.I 13 YDE Co.Ltd., Japan
	13.6. Spare parts sold and delivered to the purchaser shall be so sold and delivered at the prices prevailing when the order was placed. 13.7. The purchaser shall be entitled to the rebate specified in Annex of this contract.				
PAYMENT N	14.1. The purchaser shall pay the prices for the spare parts sold and delivered in accordance with this contract within days of the submission of an invoice by the supplier. 14.2. The supplier shall submit an invoice to the purchaser only on the delivery of spare parts.	14.2. The supplier shall submit an invoice to the purchaser only on the dispatch of the spare parts from the supplier's place of business provided that payment on foot of the said invoice will not become due until such time as the purchaser has received all the documents relating to the spare parts in question and their transport to enable delivery to be effected.			Ex. I+II 14 ECE/730 + ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	14.3. Payment shall be effected by the purchaser in the ...currency by way of ... (bills of exchange, letters of credit etc) 14.4. A payment conditional on the fulfillment by the supplier of a term shall not be due until such an obligation has been fulfilled, unless the failure of the supplier is due to an act or omission of the purchaser. 14.5. If the purchaser delays in making any payment and the delay is not due to an act or omission of the supplier, the supplier may, after written notice sent in good time to the purchaser, require payment by the purchaser of interest at the rate of % on the sum due, per annum for each week or a part of a week in which the said payment remains outstanding from the date which is 30 days from the day the payment was due.	14.5. If the purchaser delays in making any payment and the delay is not due to an act or omission of the supplier, the supplier may, after written notice sent in good time to the purchaser:- (a) postpone the fulfillment of his/her own obligations until such payment is made; and (b) recover interest on the sum due at the rate of % per annum for each week or part of a week in which the said payment remains outstanding from the date which is 30 days from the day the payment was due.		14. Any advance payments made by the purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the contract. If delivery has been made before payment of the purchase prices for spare parts from time to time delivered, the spare parts delivered and unpaid for shall, to the extend permitted by the law of the purchasers's country, remain the property of the supplier until such payment has been effected. If the law of the purchaser's country does not permit the supplier to retain the property in the spare parts, the supplier shall be entitled to the benefit of such other rights in respect thereof as such law permits him/her to retain. The purchaser shall give the supplier every assistance in taking any measures required to protect the supplier's right of property or such other rights as aforesaid.	Add. 14 ECE/574

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
WARRANTIES N	15.1. The supplier warrants that the spare parts to be delivered to the purchaser:-				
	(a) will be new, unused, of the most recent or current models and will incorporate all recent improvements in design and materials;				Ex. I 15.1(a) ADB/I-ADB/WB
	(b) will have no defect arising from the design, workmanship or materials or from any act or omission of the supplier that may develop under normal use of the supplied products in the conditions obtaining in the purchaser's country;				Ex. I 15.1(b) ADB/I-ADB/WB
	(c) are fit for the purposes for which spare parts of the same description would ordinarily be used in the conditions obtaining in the purchaser's country;				Ex. I 15.1(c) +(d) A/CONF.97/18
	(d) are fit for the particular purposes and in the conditions expressly or impliedly made known by the purchaser to the supplier;				Ex. I 15.1.Op YDE Co.Ltd., Japan
	(e) possess the qualities of spare parts which the supplier has held out to the purchaser as samples or models;				Ex. I 15.1(e) A/CONF.97/18
	(f) are of a standard and quality fit for the purpose or purposes for which spare parts of the kind sold and delivered under this contract are commonly bought as is reasonable to expect having regard to the prices, descriptions and all other relevant circumstances;				Ex. I 15.1(f) Common law ("mechantable quality")
	(g) conform with the specifications; and				Ex. I 15.1(g) ID/WG.400/2
	(h) are free from any right or claim of a third party.				Ex. I 15.1(h) A/CONF.97/18
	15.2.(a) The supplier further warrants that the spare parts will conform with the standards and rules following from the laws and regulations of the purchaser's country that are in force at the time when each consignment of spare parts leaves supplier's the factory.	15.2. The spare parts supplied under this contract from time to time shall conform to the standards mentioned in the specifications and, where no applicable standard is mentioned, to the authoritative standard appropriate to the supplier's country. The said standards shall be the latest issued by the concerned institution immediately prior to the date of dispatch of the spare parts.			Ex. I 15.2 ID/WG.400/2
	(b) It shall be the duty of the purchaser to inform the supplier of any changes in the said rules and standards as soon as they occur.				Ex. II 15.2 ADB/I-ADB/WB

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
GUARANTEE N	16.1. The supplier guarantees that the spare parts to be sold and delivered to the purchaser will be and remain as warranted for a period of months ("the guarantee period") from the date on which each spare part is first used.	16.1. The supplier guarantees that the spare parts to be sold and delivered to the purchaser will be and remain as warranted for a period of months/years from the date of delivery of each spare part.			Ex. I+II 16.1+2 ID/WG.400/2
	6.2. The purchaser shall notify the supplier forthwith of the occasion of the first use of each spare part.			16. A fresh guarantee period equal to that stated sub-paragraph in this Clause shall apply, under the same terms and conditions as those applicable to the original spare parts, to spare parts repaired or supplied in replacement of defective spare parts and to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining spare parts the guarantee period of which shall be extended only by a period equal to the period during which such spare parts are out of action as a result of a defect covered by this Clause.	Add. 16 ECE/574
	16.3. The supplier undertakes to remedy any defect or non-conformity appearing in the spare parts contrary to the warranties hereinbefore given during the guarantee period. 16.4. Where the purchaser wishes to avail him-/herself of the guarantee, he/she shall notify the supplier in writing without delay of any defect which has appeared. On receipt of such notification the supplier shall, if the defect is one that is covered by this Clause, at his/her option: (a) repair the defective spare part on site; or (b) have the defective spare part returned to him/her for repair; or (c) replace the defective spare part.				Ex. I 16.3, 4 5+6 ID/WG.400/2 ECE/730 + ECE/574
	16.5. The supplier shall bear all the expenses and costs arising out of and incidental to the implementation of this guarantee.	16.5. Unless otherwise agreed, the purchaser shall bear the cost and risk of transport of defective spare parts returned to the supplier and of spare parts supplied in replacement thereof between the place where the spare parts are			

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		situated and the place where delivery of spare parts is to be effected under this contract.			
	16.6. In addition to the costs and expenses referred to in sub-paragraph 5 hereof, if the defective spare part has been fitted or adapted for use in a product, the supplier shall pay or credit to the purchaser a sum of in respect of each spare part to cover the cost of disembling the defective spare part from the product and of re-fitting or re-adopting the repaired or replaced spare part.	16.6. In addition to the costs and expenses referred to in sub-paragraph 5 hereof, if the defective spare part has been fitted or adapted for use in a product the supplier shall pay the purchaser the expenses and costs arising out of the disassembly of the defective spare part and the re-fitting or re-adapting of the repaired or replaced spare part.			
	16.7. If the supplier, having been notified, fails to remedy any defect or non-conformity in the spare parts within a resonable period, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense, and without prejudice to any other rights which the purchaser may have against the supplier under this contract.				Ex. I 16.7+8 ADB/I-ADB/WB + ECE/574
	16.8. The said guarantee shall only apply to defects which appear under proper use. It does not cover defects due to causes arising after the risk in the products has passed. In particular, it does not cover defects arising from the purchaser's faulty maintenance, from alterations carried out without the supplier's consent in writing or from repairs carried out improperly by the purchaser save such repairs as may be carried out by the purchaser under this Clause.			16.8. The purchaser may, without prejudice to any remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part if the supplier fails to perform his/her guarantee obligations under this contract and does not cure that default within days ... after receipt of the default notice from the purchaser.	Add. 16 ADB/I-ADB/WB
	16.9. The guarantee hereinbefore given shall not be interpreted so as to limit the purchaser's remedies, either in time or scope of relief, in respect of any breach of warranty by the supplier. In particular, the supplier will remain liable in respect of any defect in the products or parts thereof rendering them unmerchantable which would not be apparent on a reasonable examination.	16.9. The supplier is liable in accordance with this contract for any lack of conformity which exists at the time when the risk passes to the purchaser, even though the lack of conformity becomes apparent only after that time. The supplier is also liable for any lack of conformity which occurs after the time indicated in the proceeding sentence and which is due to a breach of any of his/her obligations including a breach of the guarantee that for a period of time the spare	16.9. Should a latent defect in the design, manufacture, materials, workmanship or assembly of the spare parts or any part thereof become apparent, the purchaser may at any time, whether within or outside the guarantee period, require the supplier to remedy the defect in the said spare parts or part at his/her own expense whether on site or at his/her own factory. Should the supplier fail to remedy such a latent defect within ... days of his/her receipt of		Ex. I 16.9 Common law "letent deject") Ex. II 13.9 A/CONF.97/18 Ex. II 13.9 ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		parts will remain fit for their ordinary purpose or for the particular purpose required by the purchaser and/or that the spare parts will retain specified qualities or characteristics.	notification thereof from the purchaser, the purchaser shall be entitled to terminate the contract in so far as it relates to those defective spare parts and any spare parts whose use is dependant on such defective spare parts whereupon the supplier shall take back the said spare parts in respect of which the contract is terminated at the prices paid and in addition, pay to the purchaser all the expenses, costs, duties and taxes paid by the purchaser in respect of such spare parts. A latent defect shall, in this contract, be taken to mean any defect in the design, manufacture, material, workmanship or assembly of any spare part which reduces or impedes the spare part's performance, whether by immobilizing the spare part or rendering it less efficient, appearing several times in the same spare part or in several spare parts of the same kind.	
PURCHASER'S UNDERTAKING O	17.1. While this contract is in force or, where part of this contract is not in force in accordance with this contract, as regards the part hereof remaining in force, the purchaser shall not buy spare parts fulfilling a function or capable of fulfilling a function which those available from the supplier fulfill from any other supplier of spare parts.				
THIRD PARTY INDEMNITY R	18.1. The supplier shall indemnify and save harmless the purchaser in respect of any claim by third parties relating to industrial property rights in the spare parts. 18.2. The supplier shall indemnify and save harmless the supplier against any claim made by a user, third party or assign against the purchaser arising out of any damage resulting from a latent defect in any of the spare parts.				Ex. I 18 ID/WG.400/2

IMPORT AND EXPORT LICENSES AND TAXES O	19.1. The supplier shall be entirely responsible for all taxes, stamp duties, licence fees and other such levies imposed outside the purchaser's country. The supplier shall ensure the fulfillment of the formalities and shall obtain the authorizations necessary for the export of the spare parts to the purchaser's country. 19.2. The purchaser shall be entirely responsible for all taxes, stamp duties and other levies imposed inside the purchaser's country. The purchaser shall ensure the fulfillment of the formalities and shall obtain the authorizations necessary for the import of the spare parts to the purchaser's country.				Ex. I 19 ADB/I-ADB/WB
OWNERSHIP OF DOCUMENTS R	20.1. All the documents, drawings and other informative materials furnished by the supplier to the purchaser within the context of this contract will become the property of the purchaser.				Ex. I 20 ID/WG.400/2
CHANGE ORDERS O	21.1. The purchaser shall be entitled to alter or amend any order placed by him/her at no additional cost to him/her, provided that the supplier receives notificiation of the alteration or amendment before dispatching the spare parts originally ordered. Should the purchaser desire to alter or amend any order after the ordered goods have been dispatched by the supplier he/she shall pay to the supplier all the costs and expenses of the delivery of the spare parts no longer wanted by the purchaser and shall return such unwanted spare parts at his/her own cost and risk.				Ex. I 21 ADB/I-ADB/WB
ASSIGNMENT R	22.1. The supplier shall not assign, in whole or in part, his/her obligations to perform under this contract, except with the purchaser's prior written consent.				Ex. I 22 ADB/I-ADB/WB
NOTICES R	23.1. Any notice given by one party to the other pursuant to this contract shall be sent in writing or by telegram or telex cable and confirmed in writing to the address specified for that purpose in Annex of this contract. A notice shall be effective when delivered or on the notice's effective date, which ever is later.				Ex. I 23 ADB/I-ADB/WB

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
TERMINATION	24.1. Termination for default of the supplier The purchaser may, without prejudice to any other remedy for breach of contract but subject to the other terms of this contract, by written notice of default sent to the supplier, terminate this contract in whole or in part: (a) if the supplier fails to deliver any or all the spare parts within the time periods specificed in the contract or any extension thereof granted by the purchaser pursuant to Clause 10; or (b) if the supplier fails to perform any other obligations under the contract; or (c) if the supplier, in either of the above circumstances, does not cure his failure within a period of thirty days (or such longer period as the purchaser may authorize in writing) after receipt of the default notice from the purchaser. In the event that the purchaser terminates the contract in whole or in part pursuant to this subparagraph, the purchaser may procure, upon such terms and in such manner as he/she deems appropriate, spare parts similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs of such similar spare parts. However, the supplier shall continue performance of the contract to the extent it is not terminated. 24.2. Termination for insolvency by the purchaser The purchaser may at any time terminate the contract by giving written notice to the supplier, without compensation to the supplier, if the supplier becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has occured or will accrue thereafter to the purchaser. 24.3. Termination by the supplier The supplier may terminate this contract or part thereof by giving notice in writing to the purchaser, should the purchaser fail to accept delivery of spare parts within a reasonable time of their being ready for delivery. Such termination shall only apply to those spare parts of which the purchaser fails to accept delivery. Upon such termination the supplier will be entitled to	24.1. Termination for default of the supplier. The purchaser may terminate the contract in whole or in part by giving notice in writing to the supplier, should the supplier fail to deliver spare parts within the time periods specified in this contract or any extension thereof granted by the purchaser pursuant to Clause 10 hereof. The said termination will apply, at the election of the purchaser, to the spare parts undelivered and the spare parts which, although delivered, cannot be properly used without the undelivered spare parts. Where the purchaser so terminates the contract he/she shall be entitled to recover any payment which he/she has made, both in respect of all the spare parts undelivered and in respect of the spare parts which, although delivered, cannot be properly used without the undelivered spare parts, to reject the spare parts delivered which are unuseable and to recover any expenses properly incurred in performing the contract in respect of such spare parts.		24. Add. I Termination by the supplier. The supplier may terminate the contract or part thereof by giving notice in writing to the purchaser, should the purchaser fail to pay for the spare parts or any part thereof within the time periods specified in this	Ex. I 24.1, 2+3 ADB/I-ADB/WB Ex. II 24 ECE/574 Add.I 24 ECE/574

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE

	recover from the purchaser any loss suffered by reason of the purchaser's said failure up to the amount equal to the prices payable under the contract which are properly attributable to such spare parts.			contract or any extension thereof granted by the supplier pursuant to Clause 14 hereof. Where the supplier so terminates this contract he/she shall be entitled to recover any payment due in respect of delivered spare parts and all expenses properly incurred by him/her in the performance of the contract.	
				24. Add.II Termination for the purchaser's convenience. The purchaser may, by written notice sent to the supplier, terminate the contract, in whole or in part, at any time for his/her convenience. The notice of termination shall specify that termination is for the purchaser's convenience, the extent to which performance under the contract is terminated, and the date upon which such termination becomes effective. The spare parts which are ready for shipment within thirty days after the supplier's receipt of notice of termination shall be purchased by the purchaser at the contract terms and prices.	Add.II 24 ADB/I-ADB/WB
RIGHTS AT TERMINATION N	25.1. Termination of the contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under this contract.				Ex. I 25 ECE/574
FORCE MAJEURE N	26.1. Any circumstances beyond the control of the parties intervening after the formation of the contract and impeding its reasonable performance shall be considered as cases of relief. For the purposes of this Clause circumstances not due to the fault of the party invoking them shall be deemed beyond the control of the parties.	26.1. Notwithstanding the provisions of Clauses 10 and 16 the supplier shall not be liable for forfeiture of his/her performance security, if any has been given, liquidated damages or termination for default, if and to the extent that his/her delay in performance or other failure to perform his/her obligations under the contract is a result of an event of force majeure.			Ex. I 26 ECE/730 Ex. II 26 ADB/I-ADB/WB

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	26.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the ceasation thereof.	26.2. For the purposes of this Clause "force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence. Such events may include but are not restricted to, acts of the purchaser, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight imbargoes.			
	26.3. Where by reason of any of the circumstances referred to at subparagraph 1 of this Clause the performance of the contract within a reasonable time becomes impossible, either party shall be entitled to terminate the contract by notice in writing to the other party and in that event there shall be such restitution, if any, whether by way of repayment of money, return of goods, or otherwise as shall be just and as the circumstances referred to at subparagraph 1 of this Clause may permit.	26.3. If a force majeure situation arises the supplier shall promptly notify the purchaser in writing of such a condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform his/her obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means of performance not prevented by force majeure.			
				26. If the party's failure to perform is due to the failure of a third party whom he/she has engaged to perform the whole or part of the contract, that party shall be exempt from liability only if: (a) he/she is exempt under subparagraph 1 of this Clause, and (b) the person whom he/she engaged would be so exempt if the provisions of that subparagraph where applied to him/her.	Add. 26 A/CONF.97/18

HEADINGS	EXAMPLE I	EXAMPLE II			
LIMITATION OF DAMAGES R	27.1. Damages for breach of contract by one party shall consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which he/she then knew or ought to have known, as a possible consequence of the breach of contract.				Ex. I 27.1 A/CONF.97/18
	27.2. The party who sets up a breach of the contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he/she can do so without unreasonable inconvience or cost. Should he/she fail to do so, the party guilty of the breach may claim a reduction in the damages.				Ex. I 27.2 ECE/574
LANGUAGE R	28. All the documents, information and other written materials to be furnished under this contract by the supplier shall be so furnished in the .... language.				
RESOLUTION OF DISPUTES R	29.1. The purchaser and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with this contract.	29.1. Any dispute arising out of or in connection with the contract, which the parties have been unable to settle by agreement shall be settled finally out of court by arbitration by the arbitral body specified in Annex of this contract.			Ex. I 29 ADB/I-ADB/WB Ex. II 29 ECE/574
	29.2. If, after thirty days from the commencement of such informal negotiations, the purchaser and the supplier have been unable to resolve amicably a contract dispute, either party may require that the dispute be referred for resolution to arbitration in accordance with the UNCITRAL Arbitration Rules.				
APPLICABLE LAW N	30. This contract shall in all respects be governed by and be interpreted in accordance with the laws of the purchaser's country.	30. This contract shall, in all respects, be governed by and be interpreted in accordance with the laws of the supplier's country.			Ex. I 30 ADB/I-ADB/WB Ex. II 30 UNCITRAL

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
DURATION OF THE CONTRACT O	31. This contract shall continue in accordance with the terms hereof for a minimum period of years from the date of entry into force. At the conclusion of the said period of years the parties will continue to trade in accordance with the terms of this contract unless one party notifies the other of his/her desire to terminate the contract. Such notice of termination shall be effective on the expiry of a period of months from the date of its receipt by the other party.				Ex. I 3 ID/WG.400/2

SOURCES:

ID/WG.400/2	Items to be included in Model contracts for the Import, Assembly and Manufacture of Agricultural Equipment, Including Training; Model Licensing Agreement UNIDO, 21 July 1983
ADB/I - ADB/WB	Sample Bidding Documents: Procurement of Goods Asian Development Bank, Inter-American Development Bank, the World Bank, September 1983
YDE Co. Ltd., Japan	Opinion of Specialists from Japan submitted through Yanmar Diesel Engine Co., 15 February 1983
Netherlands	Opinion of Specialists from the Netherlands submitted through the Permanent Mission of the Kingdom of the Netherlands to the United Nations (Vienna), 22 Febrary 1984
ECE/S74	General Conditions for the Supply of Plant and Machinery for Export, UNECE, December 1955
ECE/730	General Conditions of Sale for the Import and Export of Durable Consumer Goods and of Other Engineering Stock Articles, No. 730 UNECE, March 1961
A/CONF.97/18	Final Act of the United Nations Conference on Contracts for the International Sale of Goods UN General Assembly, 10 April 1980

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Expert Group Meeting on Guidelines for the
Import, Assembly and Manufacture of
Agricultural Machinery and Training

Vienna, Austria, 9-12 September 1985

COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS FOR THE SUPPLY OF SPARE PARTS FOR AGRICULTURAL MACHINERY

Corrigendum

Cover page

The title of document ID/WG.443/2 should read as above.

Page ii, second paragraph

The second and third sentences should read

The clause numbers are given in the left hand column. Reference is then made in the right hand column to the "Status" of the clauses considered.

Page 1, column 2

Line 16 from the bottom: for ditructued read distributed

Lines 8-12 from the bottom should read

him/her, during the currency of this contract.

Page 7, column 2

Paragraph 10.1, line 4: for or read of

Paragraph 10.3, line 13: for property read properly

line 16: for compelte read complete

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Page 15

Column 2, line 7: for disembling read dissembling

line 9: for re-adopting read re-adapting

Column 3, line 13: for disassembly read dissembly

Column 6, line 8: for letent deject read latent defect

Page 18, column 2, paragraph 24.2, penultimate line

For occured read accrued

Page 23, line 10

For 1983 read 1984

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COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS FOR THE SUPPLY OF SPARE PARTS FOR AGRICULTURAL MACHINERY*

Prepared by

Ruth Fitz Gerald
UNIDO Consultant

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The purpose of this document is to draw together the various types and versions of the clauses contained in drafts and precedents of the contract under consideration. It is essentially a research document, drawing on existing material and not seeking to furnish any new ideas on the possible approaches to issues in contractual relations.

The headings of the contract clauses dealt with in this document appear in the middle column of the "Contents" on the next page. The clause numbers are given in the right hand column. Reference is then made in the left hand column to the "Status" of the clauses considered. The letters "N", "R" and "O" stand for "Necessary", "Recommended" and "Optional" respectively. This classification indicates the degree of importance attached to the inclusion in the contract of a clause dealing with the issue raised in the corresponding clause heading. Thus, it is felt, a clause whose heading is assigned the status "Necessary" should appear in some form in the contract, even if it is not included in terms of any of the examples provided in this document.

On the page following the "Contents" there is an example of the preamble sometimes included in contracts. The recitals contained in a preamble serve to describe, if very briefly, the setting and conditions in which the agreement between the parties has been concluded. Under legal systems which take preambles into account, these can be of assistance in interpreting the clauses of contracts should a dispute later arise. Some legal systems, however, ignore the recitals contained in the preamble to a contract.

The major part of this document is given over to samples of the clauses which can be included in the contract under consideration. The examples appear in tabulated form. In some instances only one example is given of the possible terms of a clause dealing with the issue raised in the clause heading (left hand column of the table), in others two or three examples are provided. The fifth column, headed "Additions", contains extra material which supplements rather than replaces the examples given of a particular clause. The last column of the tables indicates, in abbreviated form, the sources from which the examples and additions have been generally drawn. The sources referred to above are set out in full in the last page of this document.

As recommended by the Second Consultation on the Agricultural Machinery Industry, the sources drawn from include the documentation considered by that Consultation, the views expressed on it, other relevant national and international material, the views of the participants in the Consultation and other interested parties and the experience gained by the Secretariat in work on contractual agreements.

Clause	Heading	Status
1	Definitions	R
2	Entry into Force	R
3	Substantive Transaction	N
4	Scope of Services	N
5	Rights and Duties of Partner	N
6	Obligations of the Client	N
7	Personnel	N
8	Partner's Remuneration	N
9	Performance Security	O
10	Warranties	N
11	Failure to Perform	N
12	Limitation of Partner's Liability	R
13	Force Majeure	N
14	Changed Circumstances	R
15	Insurance	R
16	Assignment	O
17	Sub-Contracting	O
18	Secrecy	O
19	Additional Provision for Termination and Suspension	O
20	End of Contract	R
21	Status	O
22	Language	R
23	Applicable Standards	R
24	Notices	R
25	Settlement of Disputes	R
26	Applicable Law	N

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THIS AGREEMENT is made BETWEEN of (hereinafter called "the client") and of (hereinafter called "the partner") this day of .

WHEREAS:

1. The client has erected a facility for the assembly and manufacture of agricultural machinery and for the supply of services ancillary thereto in his/her own country.

2. The partner has, for a considerable number of years, managed and operated factories for the assembly and manufacture of machinery and

(a) possesses substantial valuable knowledge of a specialized nature relating to processes, methods and techniques in the operation and management of factories and the provision of ancillary services and continues to acquire information, skills, expertise and reputation relative to the management and operation of factories;

(b) has acquired substantial knowledge, skill and expertise in the efficient and proper management and operation of factories and, in particular, in the most efficient and optimum methods of initiating and establishing the management and operations of factories and activities ancillary thereto;

(c) has acquired expertise in the training of personnel for the management and operation of factories and activities ancillary thereto;

3. The client desires to acquire and have the advantage of all the partner's said and future technical knowledge, information, expertise, techniques and skills in the operation and management of a factory and the provision of ancillary services;

4. The partner is mindful that the client has available to him/her in his/her own country a far lesser tradition in industry than has the partner and that the consummation of this agreement is intended to aid and be in the interests of the industrial and economic development of the client's country.

Now, in CONSIDERATION of the premises and of the mutual convenants and conditions herein contained, the parties hereto have agreed and do by these presents agree as follows:

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	REMARKS	SOURCE
DEFINITIONS R	1. For the purposes of this contract the following terms shall be interpreted thus: -"the business" - the client's trade or proposed trade in the assembly and manufacture, sale and distribution of agricultural machinery and spare parts carried on or proposed to be carried on at the client's premises at - "contract" - this agreement including all the appendices hereto and all the documents referred to in this contract. - "plant" - all the equipment, machinery, materials and other apparatus which is used in the manufacturing processes of the client's business. -"works" - the client's factory premises at including all the plant attached thereto.				Ex.I 1 Trade/GE.1/R.3
ENTRY INTO FORCE R	2. This contract shall enter into force on its signature by the parties, or where signed separately, on the signature of the last subscribing party.	2. This contract shall enter into force on the day of			
SUBSTANTIVE TRANSACTION N	3. Subject to the terms of this contract the partner shall, for the periods herinafter specified, put into operation, manage, direct and supervise, as the case may be, the manufacturing assembly, sales and service operations of the buisness, shall render technical assistance to the client and shall train the client's employees in consideration of the payment to him/her by the client of the remuneration hereinafter set forth.				Ex.I 3 ID/WG.400/2
SCOPE OF SERVICES N	4.1. For a period of ... months from the ... day of ... (OR: from the entry into force of this contract) the partner shall be responsible for the putting into efficient operation and management of the business. His/her duties will include, inter alia: - the planning, organizing and commencement production - testing of all parts of the works - advising the client of the remidial action, if any, including the invoking of guarantees, to be taken in respect of any defects or non-conformity with the contracts under which they were supplied in any part of the works				Ex.I 4 Trade/GE.1/R.3 + ID/WG.400/2

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- establishing and putting into operation of modern management systems and procedures - planning the purchase of raw materials, semi-manufactures and other goods - investigating sources of supply for raw materials, semi-manufactures and other goods, in particular, the possibility of supplies being obtained in the client's country - managing and directing the operations - planning processes - planning and organizing the optimal use of equipment in the production process - planning and organizing the personnel requirements at all levels - establishing operating procedures for periodic optimization, product quality control and the efficient control of the consumption of fuel and utilities - drawing up operations programs, directives and instructions - checking and recommending of any modifications required for the more efficient operation of the works - ensuring that all the technical information and know how in respect of the works is transferred by the suppliers thereof to the client before the termination of the said period of months. 2. Within weeks of the termination of the period specified at sub-paragraph 1 the partner, in consultation with the client, shall prepare a works' organization study for the client. The works' orgnization study shall indicate the means by which the production capacity of the works can be maximized economically and the optimal, most efficient means of managing the works by the adaption to local conditons of the best engineering and industrial management standards. The said study shall contain a detailed description of all the organizational functions of the works, define the relationships between the various departments and services and give guidelines, inter alia , on the following matters: - Administration and Finance; including general management, organization, preparation and management of budgets, and accounting (general accounting, cost accounting and management of expenditure and income).				

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- Technical questions; including a study of the products to be manufactured and production programs, industrial engineering, adaption and modification of the products to be manufactured, documentation, methods, production timetables and measurement of working time and quality control. - Personnel; including recruitment, training, security and general services. - Production; including scheduling, managment of stocks, planning, dispatch and transport, procurement, supply, subcontracting, maintenance and repair and management of stocks of tools and equipment and of spare and replacment parts. - Matters relating to delivery, after-sales service, follow-up and adaption of products to user's requirements. 3. For a period of ... months commencing on the termination of the period referred to in sub-paragraph 1 hereof the partner shall manage the works on a day-to-day basis but will not be responsible for the overall management of the works. In partiuclar, during the said period the partner will not be responsible for procurement, financial and legal administration, marketing and after-sales service. During the said period, however, the partner shall give the client technical assistance on the following matters arising in the areas of management reserved to the client: - within ... weeks of the commencement of the period specified in this sub-paragraph, the partner shall submit to the client a budget estimating the working capital required for the works, detailing the basis on which the said estimate is made and detailing budgetary information regarding the areas of management and service for which the partner is responsible. - within ... weeks of the commencement of the period specified in this sub-paragraph, the partner shall submit to the client a list of parts and supplies required for production, indicating the quantities and purchase specifications necessary. The said list shall analyse the said spare parts as to those which are not available in the client's country, those which can only be purchased from one source or through one source, those available on the open market and those available in the client's country. The partner will update the said list and analyses.				

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- the partner will make recommendations to the client as regards the procurement of parts and supplies in accordance with the client's policy of purchasing as many parts and supplies as possible from sources within his/her own country, or where they are not there available, from sources in countries which have trade agreements with the client's country provided that the partner's recommendations are made taking into account the competitiveness of parts and supplies available from different sources, whether inside or outside the client's country. The partner shall, from time to time as required by the client, review his/her said recommendations in line with the procurement policy here outlined. 4. During the periods specified at sub-paragraphs 1 and 2 hereof the partner shall train the client's employees as set out in Annex of this contract. The object of the said training is to enable the client's employees to master all the skills necessary to manage the works efficiently, to maintain and repair the works and to operate the works in the most economical way. The training to be given by the partner to the client's employees will be substantially the same as that received by the partner's own employees engaged in similar areas of work, subject to the specific training needs of individual employees of the client. The said training will be such as will achieve the following targets: (i) At the end of the period specified in sub-paragraph 1 each of the client's employees must be thoroughly familiar with the various aspects of the work, duties and responsibilities to which he/she has been assigned; (ii) At the end of the period specified in sub-paragraph 2 the client's employees must each have obtained sufficient practical experience in the various aspects of the work, duties and responsibilities to which he/she has been assigned and will be properly trained to enable him/her to take over all the work, duties and responsibilities of the post to which he/she has been assigned. A training program and a list of the proposed trainees, their qualifications and the posts in respect of which they are to be trained appear in Appendix ... of this contract.				

RIGHTS AND DUTIES OF THE PARTNER H	5.1. The partner will exercise all reasonable skill, care and diligence in the performance of the services under this contract and shall carry out all his/her responsibilities in accordance with recognized professional/ industrial and/or managerial standards. 2. The partner shall act as a faithful adviser to the client. 3. The partner, his/her employees and sub-contractors, whilst in the country in which the services are to be rendered, shall respect the laws and customs of that country. 4. The remuneration of the partner charged to the client in accordance with this contract shall constitute his/her only remuneration in connection with this contract and neither he/she nor his/her personnel shall accept any trade commission, discount, allowance, indirect payment, benefit or other consideration in connection with in relation to this contract or to the discharge of his/her obligations hereunder. 5. The partner shall not have the benefit, whether directly or indirectly, of any royalty on or of any gratuity or commission in respect of any patented or protected article or process used on or for the purpose of this contract unless it is mutually agreed in writing that he/she may. 6. The partner will provide all the expert technical advice and skills which are normally required for the class of services for which he/she is engaged. Where specialist technical advice or assistance is required, beyond that committed under Clause 4 of this contract, the partner may, with the prior written agreement of the client, arrange for the provision of such services. The client shall be liable to pay for all such services. Notwithstanding the client's liability to pay for such services or his/her written agreement to the provision thereof, the partner shall retain full and unseverable responsibility for all the services which he/she is committed to render under this contract. 7. The partner shall not be the medium of payments made on behalf of the client to contractors and/or suppliers unless specifically so requested to be by the client.				

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	8. The partner shall have the right, subject to the client's approval, which shall not be unreasonably withheld, to publish descriptive articles with or without illustrations, with respect to the services either on his/her own account or in conjunction with other parties concerned.				
	9. Save as hereinbefore provided, the code of ethics/conduct of the partner's association, if any, shall apply to this contract in respect of the partner's professional, industrial and managerial obligations.	In so far as the code of ethics/conduct of the partner's association, if any, enlarges the partner's liability to the client as hereinbefore described, the same shall apply to this contract in respect of all the partner's professional, industrial and managerial obligations.	5.9. The said services shall be carried out in accordance with the standards and specifications particularized in Appendix ... of this contract, in so far as the same are applicable to the said services.		Ex.I+II 5.9 ECE/145 Ex.III 5.9 Trade/GE.1/R.32
OBLIGATIONS OF THE CLIENT N	6. The client shall: - provide all the raw materials, utilities and the tools, equipment, spare parts and personnel specified in Appendix ... of this contract required for the preparation, operation, start-up and testing of the works; - supply the financing in the amount and in the manner specified in Appendix ... of this contract; - furnish all pertinent design and construction data and information available to him to the partner at his own expense and within a reasonable time; - give such assistance as is reasonably required by the partner for the carrying out of his/her obligations under the contract; - organize the transportation of equipment, materials and supplies into his country; - give any decisions required of him/her in such reasonable time so as not to delay or disrupt the performance by the partner of his/her obligations under this contract; - facilitate the speedy granting to the partner and any of his/her personnel and their dependants, in respect of the client's country, of: necessary visas, licences, permits and customs clearance; unobstructed access to all sites and locations involved in the carrying out of the services; medical services, security at the works site and living quarters for the partner's employees and their dependants; the privilege of bringing into the client's country reasonable amounts of foreign currency for the purpose				Ex.I 6 Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE

of the services or the personal use of such employees and of withdrawing any such amounts brought into the country; repatriation of the partner, his/her employees and their dependents in the event of an international crisis; and assistance in the event of unforseen local and national emergencies;
- facilitate the transfer abroad of the remuneration of the partner and the salaries of his/her personnel, taking into account relevant legislation in the client's country.

PERSONNEL N

7.1. The partner shall provide all the skilled personnel required for the proper carrying out of his/her obligations under this contract. Initially, the partner shall provide the skilled personnel qualified for and experienced in the functions listed in Appendix ... of this contract provided, however, that should such skilled personnel be insufficient to enable the partner to fulfill his/her obligations properly or within the time specified therefore the partner shall provide addtional skilled personnel.

2. Should it become necessary to replace any member of the partner's personnel during his/her contracted term, the partner shall arrange forthwith for such replacement with a person of comprable experience. The party requesting the replacement shall be responsible for the financial consequences thereof save in the case that the client has requested the replacement for reasons of misconduct, inability to perform or violation of laws. All such requests for replacement, for whatever reason, must be presented in writing with the particular reason stated.

3. The partner may, from time to time, delegate to a manager any of the powers, authorities, duties or responsibilities vested in him/her. Such a manager shall work under the partner's instructions and shall have the authority required to enable him/her to carry out the duties and responsibilities delegated to him/her and to exercise direct management powers and control over the areas of operation delegated to him/her. All and any such delegations by the partner shall be made in writing and the partner shall furnish the client with copies thereof. The partner shall at all times remain responsible for the acts and omissions of managers to whom he/she has delegated all and any of his/her powers, authorities, duties or responsibilities.

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	4. The client's empolyees assigned to work in the business shall be remunerated by the client. The client's said employees shall not be removed or replaced save by the client acting in consultation with the partner. In all other respects t' client's employees shall be subject tr che administrative direction and su ervision of the partner save as regards tho aspects of the buisness reserved to the lient in the period specified in Clau.s 4 subparagraph 3. Notwithstanding the appointment of the said employees by the client the partner shall retain full and unseverable responsibility for the due performance of his/her obligations hereunder and for the satisfactory completion of the services. The partner accepts liability for the services of the client's employees save as regards those aspects of the business reserved to the client in the period mentioned in Clause 4 (Scope of Services), subparagraph 3 5. The client shall pay the partner the monthly sum specified according to category in Appendix ... of this contract in respect of each member of the personnel furnished by the partner in each category. The client shall pay the said monthly sums in respect of the numbers and categories of the partner's listed in Appendix ... of this contract, only.				
PARTNER'S REMUNERATION N	8.1. The client shall further remunerate the partner in respect of the services in accordance with the conditions set forth in Appendix ... of this contract. 2. The reimburseable costs will become payable only on the submission by the partner of an invoice in their regard. 3. The partner's fee over and above the reimburseable costs, specified in Appendix ..., shall be payable in the amounts and at the times specified in the said Appendix. 4. Amounts due to the partner shall be paid promptly. If the client fails to pay the partner he/she shall be liable as hereinafter specified. 5. If any item or part of an item of an invoice furnished by the partner is disputed or subject to question by the client, the payment by the client of that part of the			8.1 Add.I The only costs reimburseable to the partner shall be those set out in Appendix ... of this contract. 8.5 Add.II The client may nominate a firm of accountants to audit all amounts claimed by the partner. Advance written notice must be given by the client or the firm of	Ex.I 8 Trade/GE.1/R.32 Add.I 8 ECE/145 Add.II 8 ECE/145

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	invoice which is not contested shall not be withheld on those grounds and the provisions of sub-paragraph 4 of Clause 11 (Client's Failure to Perform) shall apply to such a remainder and also to the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the partner and interest at the rate specified in the said sub-paragraph 2 of Clause 11 shall be paid on all disputed amounts finally determined payable to the partner.			accountants of such audit; it shall be carried out during normal working hours at the place where the records are maintained.	
				8.Add.III The client shall be entitled to set off against any sums due by him/her to the partner, any amounts by way of reimbursements, damages or liquidated damages due from the partner to him/her.	Add.III 8 ECE/145
	6. Whenever it shall be necessary to evalue one currency in terms of another for the purpose of the payment of an amount to the partner, the rate of exchange applicable shall be the rate published by an official source in the client's country on the date the payment is due.				
PERFORMANCE SECURITY O	9. The partner shall furnish performance security to the client in the amount of ... The proceeds of the said security shall be payable to the client as compensation for any damage or loss resulting from the partner's failure to complete his/her obligations to the client under this contract but the said compensation will not be limited thereto. The performance security shall be denominated in the currency of this contract or in a freely convertible currency acceptable to the client and shall be in one of the following forms: - A bank guarantee or irrevocable Letter of Credit, issued by a bank and in a form acceptable to the client. - A cashier's cheque, certified cheque or cash. The performance security will be discharged by the client not later than days following the date of completion of the partner's obligations under this contract.	Should the client at any time have a proper claim against the partner for loss or damage resulting from the partner's failure to complete his obligations under this contract, the client shall be entitled to withhold payment of monies due from him/her to the partner under this contract up to the amount of the damages, including loss of profit or other loss and expenses, recoverable. The provisions of sub-paragraph 4 of Clause 11 shall apply to such a withheld sum to the extent that it shall subsequently be agreed or determined that no sum or a lesser sum than that withheld is due to the client from the partner. Before withholding any sum, the client shall give notice of his/her intention so to do to the partner and the partner shall have the right to reply to the said			Ex.I 9 ADB/I-ADB/WB Ex.II 9 Trade/GE.1/R.1

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		notice within ... days of his/her receipt thereof. Should the client without proper justification withhold any sum from the partner, the client shall be guilty of a breach of contract.			
WARRANTIES N	10. The partner warrants that: (a) Before the end of the period specified in Clause 4 sub-paragraph 3 the plant will be working in such a manner as to assemble and/or manufacture the agricultural machinery, equipment and other apparatus specified in Appendix... hereof in conformity with the specifications detailed in Appendix ... of this contract. (b) On the conclusion of this contract (in accordance with the terms hereof) the plant will be in such a condition as will enable, with due maintenance and repair, the continued manufacture of agricultural machinery as described at (a) above. (c) Before the end of the period specified in Clause 4 sub-paragraph 3 the works will be manufacturing agricultural machinery in conformity with, or in greater quantities than, the annual production figures specified in Appendix ... hereof. (d) On the due conclusion of this contract the works will be in such a condition as will enable them, with due maintenance and repair, to maintain the production level referred to at (c) above.				Ex.I 10 Trade/GE.1/R.32
FAILURE TO PERFORM N	11.1. Should either party fail to carry out his/her obligations under this contract then, in addition to the reliefs hereinafter provided, the other party may: -demand in writing that the party in breach comply with the terms of the contract, and, -if, within a reasonable time after receipt of such a demand the party in breach fails to take steps in good faith to comply with this contract, the other party may, without prejudice to the exercise of any other right or remedies available to him/her, terminate the contract by giving the party in breach written notice to that effect.				Ex.I 11.1 Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	2. (a) Should the partner delay in the performance of the services he/she shall be liable to pay to the client compensation and damages for any loss or damage suffered by the latter by reason of the delay.	11.2 (a) Should the partner delay in the performance of the services, the partner shall be liable to pay the client liquidated damages as hereinafter specified without any proof of loss or damage being adduced by the client.			Ex.I 11.2 ECE/ .5 Ex.II 11.2 Trade/GE.1/R.32 + ECE/145
	(b) Should the partner fail to perform some of the services or should the services be rendered in a defective manner the client may require the partner to complete the said services or to correct the said defective performance within a reasonable time of the partner's receipt of the written notification of default. If the unperformed services or defective services are impossible to remedy or if the partner fails to remedy them within a reasonable time of his/her receipt of the notification of default, he/she shall pay the client compensation and damages for any loss or damaged suffered by the client by reason thereof.	(b) Should the partner fail to perform some of the services or should the services be rendered in a defective manner the client may require the partner to complete the said services or to correct the said defective performance within a reasonable time of the partner's receipt of the written notification of default. If the unperformed services or defective services are impossible to remedy or if the partner fails to remedy them within a reasonable time of his/her receipt of the notification of default, he/she shall pay the client liquidated damages as hereinafter specified without any proof of loss or damage being adduced by the client.			- 11 -
	(c) Where the partner is liable to pay to the client compensation and damages for loss and damage suffered by the client by reason of the partner's default in the rendering of the services, such compensation and damages shall not exceed the damage which the partner could reasonably have forseen at the time of the formation of the contract. The client shall be under a duty to take all necessary measures to minimize the loss which has occurred provided that he/she can do so without unreasonable inconvenience or cost. Should he/she fail to do so, the partner may claim a reduction in the compensation and damages.	(c) If the partner fails to perform the services within the time periods allowed under this contract the client shall, without prejudice to his other remedies under this contract, deduct from the remuneration of the partner and any reimbursable costs and expenses, as liquidated damages, a sum equivalent to ... % of the partner's weekly remuneration for each week of delay until		11.1 (c) Notwithstanding anything herein contained to the contrary, the client shall indemnify and save harmless the partner for and against any and all claims, damages, expenses or costs (including those asserted by third parties) directly or indirectly related to the services to the extent that such claims, damages, expenses and costs exceed in total the partner's remuneration for the services (or ... % of the partner's total	Add. 11 Trade/GE.1/R.32 + FIDIC

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		actual performance up to a maximum deduction of ... % of the total remuneration payable to the partner under this contract. Once the maximum has been reached, the client may consider termination of the contract. The "weekly remuneration" of the partner shall be calculated by dividing the total remuneration payable to him/her by the number of weeks provided by this contract for the performance of the services. If the partner fails to perform some of the services or should the services be rendered in a defective manner, the client shall, without prejudice to his/her other remedies under this contract, deduct from the remuneration of the partner and any reimburseable costs and expenses or claim against the partner, as liquidated damages: -in the case of unperformed services a sum of ... -in the case of services defectively rendered a sum of ...		remuneration). This indemnity shall not apply in cases where such claims, damages and expenses arise from gross negligence or criminal action by the partner or to any claims, damages or expenses arising out of the violation of legal provisions or rights of third parties in respect of patents and/or copyrights introduced into documents prepared by the partner.	- 12 -
	3. Should the client default in the performance of his/her obligations under this contract then: -any delay in the performance of the partner's obligations consequent upon such default of the client shall be deemed not the fault of the partner, and -the client will be liable to pay to the partner compensation for any loss or damage sustained by the partner by reason of the client's default.				Ex.I 11.3 ECE/145 + Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	4. Amounts due to the partner from the client shall be paid promptly in accordance with this contract. Should the client fail to pay to the partner any sum due under this contract within ... days of the due date the client shall pay interest at a rate of ... % per annum for each month or part of a month in which such payment is not made as and from the date of receipt of the invoice therefor. The partner may, by written notice to the client, terminate this agreement if he/she has not received payment of that part of any invoice which is not contested within ... days of the submission thereof. Such termination will not prejudice or affect the accrued rights, claims or liabilities of either party to this contract.				Ex.I 11.4 FIDIC
LIMITATION OF PARTNER'S LIABILITY R	12.1. The partner is not liable for any part of the works which are not under his/her responsibility save in so far as any loss or damage in respect thereof arises in consequence of decisions taken by the partner and/or directions given by him/her in the course of his/her performance of the services. 2. The partner is not liable for any loss or damage resulting from any act or omission of the client or any contractors engaged by the client which is not covered by the services to be performed by the partner or his/her instructions or advice.				
FORCE MAJEURE N	13.1. Neither party shall be liable for his/her failure to perform any of his/her obligations under this contract if such failure is due to an impediment beyond that party's control, occuring after the entry into force of the contract and which he/she could not reasonably have been expected to take into account at the time of the conclusion of this contract, or have avoided or overcome it or its consequences.	13.1 The partner shall promptly notify the client in writing of any situation or event arising from circumstances beyond his/her control and which he/she could not reasonably forsee and which makes it impossible for the partner to carry out in whole or in part his/her obligations under this contract. Upon the occurrence of such a situation or event the services shall be deemed to be postponed for a period equal to that caused by the force majeure and a reasonable period, not exceeding ... months to remobilize for the continuation of the services.			Ex.I 13 ECE/145 A/CONF.97/18 Ex.II 13 FIDIC + Trade/GE.1/R.32

HEADINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	- he/she is exempt under sub-paragraph 1 of this Clause, and - the person whom he/she has so engaged would be so exempt if the provisions of that sub-paragraph were applied to him/her. 4. Upon the occurence of such an impediment the performance of the parties' obligations under this contract shall be deemed postponed for a period equal to that caused by the force majeure and a reasonable period, not exceeding ... month(s) to remobilize for a continuation of the parties' obligations under this contract. 5. Should the performance of either party's obligations under this contract have been postponed under this Clause for a period in excess of ... months, either party may terminate this contract by giving written notification thereof to the other party. Such termination will not prejudice or affect the rights, claims or liabilities of either party occrued up to the time of the occurrence of the impediment.				- 14 -
CHANGED CIRCUM-STANCES R	14. 1. Should circumstances arise which call for modifications of this contract these may be made by mutual consent, given in writing. Proposals in this respect from one party shall be given due consideration by the other party. 2. If in the country in which the project is being carried out there should occur, subsequent to the date of this contract changes to any national or state statute, ordinance, decree or other law or any regulation or bye - law which causes additional or decreased cost to the partner in the performance of his/her services, such additional or reduced cost shall be borne or credited to the client and the agreed remuneration adjusted accordingly.				Ex.I 14 Trade/GE.1/R.32 + FIDIC
INSURANCE R	15. The partner will obtain and maintain, from the date of commencement of the services, at his/her own expense, insurance in respect of the following: (a) professional insurance covering his/her own work (b) insurance against loss of or damage to the equipment used in the execution of his/her duties	15. Unless notice is given in writing to the contrary by the client, the partner shall, at the client's expense, take out and maintain on terms and conditions approved by the client, insurance against third party liability and against loss or damage in the execution of the services, provided that			Ex.I 15 ECE/145 Trade/GE.1/R.32 Ex.II 15 FIDIC

READINGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
		The partner may, by written notice to the client, terminate this contract if the services have been postponed pursuant to this subparagraph for a period in excess of ... months.			
	2. The party invoking this Clause must promptly notify the other party in writing of the impediment, its affect on his/her ability to perform and of its cessation. If such notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he/she is liable for damages resulting from such non-receipt in accordance with this contract.	13.2. Should the partner be an indvidual person and, for any reasons beyond his/her control and which he/she could not reasonably have forseen and for which he/she is not responsible, be unable to perform his/her obligations under this contract, or have it performed entirely, this contract will terminate without prejudice to the accrued rights of either party against the other. The client shall in that case pay the partner or his/her successors and assigns upon the surrender of the documents necessary for the continuation of the services, in so far as they are available, such part of the remuneration as corresponds to the state of the services under this contract, including any reimbursable costs and those termination costs (if any) becoming due to the partner or his/her successors and assigns from contracts already entered into in respect of this contract.			
	3. If the party's failure is due to the failure by a third party whom he/she has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:				

HEADIN	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	(c) insurance covering sickness or industrial accidents affecting the personnel (d) third party liability insurance, including the client and any employee of the client for damage due to death, personal injur , or property damage resulting from the performance of the contract.	the partner shall use his/her best efforts to maintain at his/her own cost, reasonable professional liability cover.			
ASSIGN O	16. The partner shall not, without the written consent of the client, assign the benefits, other than the assignment of any monies due or to become due, under this contract. The partner shall not, without the written consent of the client, in any way assign or transfer the obligations under this contract or any part thereof.				Ex.I 16 FIDIC
SUB-CONTRA O	17. Any sub-contract or modification or termination thereof relating to the performance of the services by the partner shall be made only with the advance written agreement of the client.				
SECREC	18.1. Both the client and the partner are precluded from revealing confidential information. "Confidential informat ¬" includes all facts relating to the subject of the contract, except those facts which are generally known or required to be revealed to enable the services to be carried out. The parties shall bind to secrecy all persons concerned with the execution of the works, including their respective employees. A violation of the said confendentiality will be deemed a breach of contract. This Clause will not bind the partner to the extent that other provision in this regard is made elsewhere in this contract. 2. The copyright of documents prepared by the partner from the client pursuant to this contract shall rest in the client. In all other cases the copyright in documents shall vest in the party who has prepared the same.				

HEAD	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
ADDI AL PROV FOR - NATI D SUSP N O	19.1. In addition to the circumstances hereinbefore specified wherein this contract may be terminated or performance of the services suspended by one or other of the parties, the client may, by written notice to the partner, give prior notice of his/her intention to abandon the services, in whole or in part, or to terminate this contract. The effective date of such termination of this contract shall not be less than ... days after receipt of such notice, or such other shorter or longer period as may be agreed between the parties. Upon receipt of such notice the partner shall take immediate steps to bring the services to a close and to reduce expenditure to a minimum. 2. Upon the postponement of the services or termination of this contract under the provisions in that regard contained in this contract and subject to the partner's obligation to reduce expenditure to a minimum as stated in the preceeding sub-paragraph, the partner shall be entitled to receive the remuneration due up to the effective date of postponement or termination and reimbursement in full for such costs reimbursable to him/her under this contract and legitimately incurred prior to the effective date of such postponement or termination and for all costs incidental to the orderly termination of the services, including return travel of the partner's personnel, their dependents and effects. 3. Termination of this contract, for whatever reason, shall not prejudice or affect the accrued rights or claims and liabilities of either party to this contract. 4. Upon the payment to the partner of the sums due to him/her on the termination of this contract, for whatever reason, the partner will deliver to the client all completed drawings, specifications and other documents relevant to the services and the project to which the latter are addressed that are in his/her possession.				Ex.I 19. FIDIC +3 Trade/GE.1/R.32 Ex.I 19.4 ECE/145
END HE CON R	20.1. This contract shall expire, as circumstances may direct, either: -on the date of completion of the parties' respective obligations under this contract, or -on the termination of this contract pursuant to the provisions of this contract.				Ex.I 20 ECE/145 + Trade/GE.1/R.32

INGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
	2. The partner's obligations shall be deemed completed when the works have, for a period of ... months, operated in the manner herein warranted. The client's obligations shall be deemed completed when all the payments properly due to the partner have been made by the client. 3. The termination or expiry of this contract shall not prejudice or affect the rights or claims and liabilities of either party.				
US O	21. Nothing contained herein shall be construed as establishing or creating a relationship of master and servant or principal and agent save in respect of those matters wherein the parties' relationship is specifically stated to be of one or other kind.				Ex.I 21 FIDIC
UAGE R	22. This contract is drawn in both the .... language and the ... language. The ruling language of this contract is the ... language. All the documentation and information relating to the services and the project towards which the latter are directed, whether to be furnished by the client or the partner, shall be so furnished in the ... language. The training of the client's employees and all literature auxillary thereto shall be in the ... language. Any arbitration proceedings taking place under this contract shall be conducted in the ... language.				Ex.I 22 Trade/GE.1/R.32 + ECE/145
LICABLE NDARDS R	23. The technical standards to be used in the project to which the services are directed are the highest standards prevailing in the ... partner's country.	23. The technical standards to be used in the project to which the services are directed are the highest standards prevailing in the client's country. The client shall transmit to the partner copies of the standards and norms applicable in the client's country at the date of the commencement of the services. Further, the client shall keep the partner informed of any changes which may occur in the said standards and norms during the period in which the services are being carried out.			Ex.I+II ECE/145 + Trade/GE.1/R.

INGS	EXAMPLE I	EXAMPLE II	EXAMPLE III	ADDITIONS	SOURCE
ICES O	24. All notices under this contract will be given in writing and will be deemed to have been given if delivered by one of the following means: -personal delivery to the designated representative of either party -by telex -by telegram -by registered post at the specific designation of the parties as set forth in Annex ... of this contract.				Ex.I 24 FIDIC
TTLEMENT DISPUTES	25.1. Should the parties' disagree over some technical matter then such a disagreement shall be submitted, without delay, to an expert appointed by ... for the purpose in order to obtain the opinion of the said expert on the said technical disagreement. If the parties are unable to reach agreement after a consideration of the opinion of the technical expert then the following provisions of this Clause shall apply in respect of the said disagreement. The opinion of the technical expert shall be admitted as evidence in any subsequent proceedings. The costs and expenses of obtaining the said opinion of the technical expert shall be borne equally by the parties.	25. Any dispute or difference airising out of this contract, including those considered as such by only one of the parties, shall be finally settled by arbitration in accordance with the provisions of the ... Arbitration Rules.			Ex.I 25 Trade/GE.1/R.32 + ECE/145
	2. Any dispute or difference arising out of this contract, including those considered as such by only one of the parties, shall be finally settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules. 3. The arbiter's decision shall be final and binding on both parties. The resulting award shall be in lieu of any other remedy. The arbiter will not be of the nationality of either the client or the partner.				Ex.I+II 25 FIDIC + Trade/GE.1/R.
APPLICABLE LAW N	26. The law of the client's country shall govern this contract in all respects and the contract shall be construed in accordance therewith.	26. The law of .... shall govern this contract in all respects and the contract shall be construed in accordance therewith.			

SOURCES:

Trade/GE.1/R.32	Guide on Drawing up International Contracts for Services Relating to Maintenance, Repair and Operation of Industrial and Other Works UN/ECE, 7 March 1984
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ADB|I-ADB|WB	Sample Bidding Document/Procurement of Goods Asian Development Bank, Inter-American Development Bank, The World Bank, September 1983
FIDIC	International Model Form of Agreement between Client and Consulting Engineer and International Rules of Agreement between Client and Consulting Engineer for Design and Supervision of Construction of Works. Federation Internationale des Ingenieurs-Conseils, IGRA, D+S 3rd Edition
A|CONF.97|18	Final Act of the United Nations Conference on Contracts for the International Sale of Goods UN General Assembly, 10 April 1980

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COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS FOR THE INITIAL MANAGEMENT OF A FACTORY FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY AND THE RENDERING OF TECHNICAL ASSISTANCE ANCILLARY THERETO

Corrigendum

Cover page

The title of document ID/WG.443/3 should read as above.

Page ii, second paragraph

The second and third sentences should read

The clause numbers are given in the left hand column. Reference is then made in the right hand column to the "Status" of the clauses considered.

Page 1, column 2, paragraph 4.1, line 7

After commencement insert of

Page 2, column 2, lines 1 and 21

Delete of

Page 5

Column 6, line 1: insert Ex.I 5
FIDIC
Column 2, paragraph 4, line 8: after with insert or

Page 9, column 2

Line 9: for sub-paragraph 2 read sub-paragraph 4

Paragraph 6, line 1: for evalue read evaluate

Page 13 should read 15 and page 15 should read 13.

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Page 14, column 2, paragraph 2, lines 7 and 9

For cost read costs

Page 16, column 2

Paragraph 18.1, line 11: for confendentiality read confidentiality

Paragraph 2, line 2: for from read for